ANNUAL REPORT

1976

Massachusetts Labor Relations Commission

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
1604 LEVERETT SALTONSTALL BUILDING
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Michael S. Dukakis
Governor

James S. Cooper
Chairman
Madeline H. Miceli
Commissioner
Henry C. Alarie
Commissioner

To:

The Honorable Paul Guzzi
Secretary of the Commonwealth
Boston, Massachusetts

Sir:

We are pleased to submit to you the report of the Massachusetts Labor Relations Commission for the fiscal year ending June 30, 1976, in compliance with the provisions of Section 32 of Chapter 30 of the General Laws, and Section 9-0(c) of Chapter 23 of the General Laws, as amended.

LABOR RELATIONS COMMISSION

James S. Cooper

JAMES S. COOPER, Chairman

Madeline H. Miceli

MADELINE H. MICELI, Commissioner

Henry C. Alarie

HENRY C. ALARIE, Commissioner

Boston, Massachusetts
July 30, 1976

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Approved by Alfred C. Holland, State Purchasing Agent

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I. ABOUT THE LABOR RELATIONS COMMISSION

A. About the Report

The purpose of this report is to provide information concerning the role of the Labor Relations Commission in administering Chapter 150E and Chapter 150A of the General Laws of Massachusetts. By describing significant decisions decided by the Commission and the Courts; amendments to the Commission's caseload and staffing levels, it is hoped that all may better understand the important functions performed by the Labor Relations Commission.

B. A Brief Description

The Labor Relations Commission was established in 1937 for the purpose of administering Chapter 150A of the General Laws, the "Baby Wagner Act". The Commission's jurisdiction was expanded over the years to include employees of public employers. In 1969 the Mendonca Commission was established by the legislature to revise the then effective Chapter 149. After much debate Chapter 149 was repealed, substantially revised and reenacted as Chapter 150E of the General Laws by Chapter 1078 of the Acts of 1973. Thus the Commission currently enforces the law granting public and private employees the right to organize and bargain collectively with their employer.

The cases which come before the Commission may be divided into four categories: representation cases; unfair or prohibited practices; strikes; and requests for binding arbitration. In the representation cases the Commission's function is to determine the unit appropriate for collective bargaining. This is simply a decision as to which employees have a sufficient

community of interest so that they may be grouped together in what is called a "unit". Along with community of interest the Commission must also consider efficiency of operations and effective dealings and safeguarding the rights of employees to effective representation. After the Commission determines the unit, it conducts a secret ballot election among those employees to determine which representative, if any, they select for the purposes of collective bargaining. After the election we certify the results and drop out of the picture while the parties enter collective bargaining (See Chart B).

If there are problems between an employee organization either prior to an election or subsequent to an election, one of the parties may file charges of unfair or prohibited practices with the Commission. The Commission investigates the charges by calling the parties together for an informal conference. At the conference the Commission's agent obtains the facts from both sides (and also attempts to settle the dispute at that level). The agent reports the results of the investigation to the Commission. If the Commission finds that the allegations are such that violation of the law may have occurred, the Commission will schedule a hearing on the charge. The hearing will allow both sides to present evidence and to rebut evidence presented by the other side. Upon the conclusion of the evidence, the Commission will issue a decision and order. These decisions and orders are subject to review in the Superior Court (See Chart C).

A third type of case which comes before the agency is the strike. Under current law, public employees are prohibited from striking. Thus whenever such employees are about to strike or are engaged in a withholding of service, the Commission must investigate and "set requirements that must be complied with". This action is given highest priority with the Commission and it acts immediately.

C. Workload

The Commission's workload has increased dramatically over the years. During Fiscal year 1971 the Commission received 316 as compared to 736 cases in Fiscal 1976 (See Table 1). During the past Fiscal year over 45,000 employees participated in collective bargaining, nearly a 900% increase from Fiscal 1975 (See Chart D).

Since July 1, 1975, the Commission has handled 24 strike investigations. Once the Commission sets requirements, the Commission enforces those requirements through the courts. The Commission is responsible for enforcing the orders of the court. Effective enforcement is hindered by the Commission's inadequate funding and staffing levels. During the September, 1975 Boston teachers strike, Superior Court Jude Samuel Adams stated that the Labor Relations Commission must be relied upon to enforce injunctions in strike situations and if it lacks the staff or the funds "it shoud go before the Legislature and request such because it puts a terrible burden on the Court and puts into question the integrity of the Court...."

II. THE STRUCTURE OF THE AGENCY

A. Commissioners and Duties

The Commission is composed of three members, each of whom serves a five-year term. During this reporting period, James S. Cooper was named Chairman of the Commission, on October 8, 1975. He succeeded Alexander Macmillan as Chairman.

Madeline H. Miceli has been a member of the Commission since April 22, 1965. She served as Chairman for a three-year period January 14, 1969 - March 8, 1972, and was reappointed as a member in September, 1974. Her new term expires August 25, 1978.

Henry C. Alarie has been a member of the Commission since January 14, 1969. He was reappointed on September 13, 1972 and his term expires August 25, 1977.

The Chairman functions as a member of the Commission and also as Chief Administrative Officer. The general duties of the Commission are set forth in Section 9 0 of Chapter 23 of the General Laws. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law. The Commission has promulgated such rules and regulations, the latest effective June 1, 1976.

B. Staff and Duties

All other employees function in a staff capacity and serve adjunct to the commissioners. Under the Commission's current rules and regulations, effective July 1, 1974, the following staff functions are delineated:

A permanent civil servant serves as Executive Secretary. His or her duties are to supervise and assign various duties to all employees, under the general direction of the Commission. He prepares an agenda for all Executive Sessions and keeps the Commission informed of all matters pending and keeps a permanent record of the disposition of any matter discussed and/or voted upon at an Executive Session. There is also an Assistant Executive Secretary.

Attorneys are designated by the Commission as its agents: (a) to prosecute any inquiry necessary to the performance of its functions; (b) to appear for and represent the Commission in any case in Court; and (c) to have access to and the right to copy evidence, to examine witnesses, to receive evidence, and to conduct hearings.

Examiners are also designated by the Commission as its agents; (a) to make any inquiry under the direction of the Commission relative to proceedings; (b) to have access, for the purpose of examination, and the right to copy any evidence that relates to any matter under investigation or in questions; and (c) to conduct elections.

As the present organizational chart indicates, a total staff of 27 supports the Commission. During FY 1976[1/] the number of staff fluctuated slightly, it now stands at three Commissioners, an Executive Secretary, an Assistant Executive Secretary, five attorneys,

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1/ Effective FY 76 two stenographers positions were eliminated due to budget cuts and the position of Public Information Officer was eliminated.

five examiners, three stenographers, and nine clerical force.

III. CASELOAD ACTIVITY

A. General Trends

The Labor Relations Commission assumed broader jurisdiction and responsiblity when the law permitting municipal collective bargaining went into effect on February 15, 1966. At that time, few states permitted bargaining among public employees. With the expansion of jurisdiction came an even more dramatic increase in the Commission's caseload which in 1965 consisted of 65 cases. By the end of fiscal year 1966,[2/] in less than five months of the Act's existence, 78 representation cases and prohibited practice cases were filed in the public sector, compared with 79 total cases in the private sector during the entire fiscal year. The public sector caseload typically dwarfs private sector activity in Massachusetts and elsewhere. Since Fiscal 1966 the Commission's caseload has increased 500%. Specifically, in FY 1966 the total case load was 157 and in FY 1976 it was 736.

The Commission's total work is fairly evenly divided - in the private and public sectors alike - between representation and prohibited practice cases. Thus, as Table 1 indicates, there were 245 representation petitions and 137 complaints involving prohibited practices filed in FY 1972; 238 representation and 244 prohibited practice cases in 1973; 229 representation and 233 prohibited practice filed in FY 1974; and 379 representation petitions and 375 prohibited practice filings in FY 1975.

[2/] Fiscal year 1966 is the period from July 1, 1965 to June 30, 1966.

In FY 1976, there were 272 representation petitions and 350 prohibited practice charges filed with the Commission. Private sector filings during the same period were similarily apportioned; 54 representation and 40 unfair labor practice cases in FY 1972, 49 representation and 33 unfair labor practice cases in FY 1973, 68 representation and 43 unfair labor practice case in FY 1974, 21 representation and 23 unfair labor cases in FY 1975 and 32 representation and 40 unfair labor cases in FY 1976.

Representation cases, as reported in Chart A, includes clarification or "CAS" petitions. Brought for the purpose of seeking clarification or amendment of recognized or certified bargaining units; these petitions are a special subset of representation cases. Thes cases totaled 49 in FY 1972, 30 in FY 1973, 38 in FY 1974, 63 in FY 1975, and 67 in FY 1976. The table below shows increases since FY 1966 in CAS petitions filed with the Commission:

CAS Petitions Received (By Sector)

	FY 76	FY 75	FY 74	FY 73	FY 72	FY 71	FY 66
Total	67	63	38	30	49	24	0
Municipal	64	59	35	28	46	19	
State	3	4	3	2	3	5	
Private	0	0	0	0	0	0	

B. Elections

Elections directed by the Commission or agreed to as consent elections have also been primarily in public sector, where organizational activity has been at its height. The Commission conducted a total of 185 elections in FY 1976

compared with 180 elections in FY 1975, 169 elections in FY 1974, 233 elections in FY 1973, and 188 elections in FY 1972, according to the Table 3 below:

	FY 76	FY 75	FY 74*	FY 73	FY 72	FY 71	FY 66
Total Elections	185	180	169	233	188	122	70
Municipal	143	154	126	180	143	93	34
State	17	7	10	4	14	4	0
Private	25	19	33	49	31	25	36

The public sector also led in the total number of employees eligibe to vote in these elections. In FY 1972, for example, 7627 employees were involved in elections in municipal units as compared to 2569 in private sector; in FY 1973, the municipal figure was 7982 and the private sector was 2807; in FY 1974, it was 4321 in municipal sector and 1703 in the private sector, in FY 1975 it was 6201 in the municipal sector and 132 in the private sector, and in FY 1976 it was 45,039+ in the municipal sector and 260 in the private sector.

*A moratorium on public sector representation petitions was in effect during May and June, 1974.

+This number reflects the effect of elections involving state employees.

C. Hearings

Total hearings conducted by the Commission is another indicator of its caseload activity and the amount of time devoted to processing petitions. There are basically two types of hearings: (1) informal or pre-investigative conferences, which are conducted to investigate complaints of prohibited practices or petitions for certification; and (2) formal hearings which are conducted to determine whether a prohibited practice has been committed[3/] or to resolve appropriate unit and placement questions on representations petitions.

As indicated by (Chart G), the total number of hearings have increased almost 9 fold since FY 1966. At the end of FY 1975 the Commission, by authority of Sections 4 and 11 of Chapter 150E instituted Expedited Hearings. Such hearings are conducted by an agent of the Commission. The parties involved have the right to appear in person or otherwise to defend their position at such a hearing. The decisions and determination of the agent assigned to the hearing are final and binding unless the parties request a review by the full Commission. The purpose for implementing the "Expedited Hearing" was to provide a fair and efficient means for deciding important issues before the Commission.

3/ A third type is an expedited procedure whereby the hearing is conducted by a member or agent of the Commission. Decisions of the Hearing Officer are final unless, within 10 days of notice thereof, any party requests a review by the full Commission.

However, it must be noted that the number of hearings is not necessarily indicative of the number of matters disposed of by the Commission. Thus, one case might require many days of hearings, while another may be completed in one sitting. There are many cases which are withdrawn or resolved amicably before the formal hearing stage. Indeed, the Commission makes a concerted effort to reduce the number of formal hearings by attempting to resolve cases at earlier stages.

D. Case Designations

The following are the code letters used to designate the various types of cases which come before the Commission:

CODE LETTERS	MEANING
MCR:	Petition by or on behalf of Municipal Employees seeking certification or decertification of an Employee Organizaton.
CR:	Petition by or on behalf of Private Employees seeking certification or decertification of an Employee Organization.
SCR:	Petition by or on behalf of Employees of the Commonwealth seeking certification or de-certification of an Employee Organization.
MCRE:	Municipal Employer seeks to resolve claim of representation by one or more Employee Organizations.
CRE:	Employer in private industry seeks to resolve claim of representation by one or more Employee Organizatior

CODE LETTERS	MEANING
SCRE:	Commonwealth seeks to resolve claim of representation by one or more Employee Organizations.
SCRX:	Representation cases filed with the Bureau of Personnel and Standardization. (Such cases only arose before July 1, 1974).
CAS:	Employee Organization or Employer seeks clarification or amendment of recognized or certified bargaining unit.
MUP:	Complaint filed by employee organization against Municipal Employer.
UP:	Complaint filed by employee organization against Private Employer.
MUPL:	Complaint filed by Municipal Employer or an individual against employee organization.
UPL:	Complaint filed by Private Employer against employee organization.
SUP:	Complaint filed by employee organization against the Commonwealth.
SUPL:	Complaint filed by the Commonwealth against an employee organization.
SUPX:	Unfair labor practice complaints filed with Bureau of Personnel and Standardization. (Such matters only arose before July 1, 1974.)

Using the code letters above and Table 4, a detailed caseload analysis can be constructed, indicating the components of the public sector (municipal and state) and private, as well as the number of actions initiated by employers, employee organizations or individuals.

E. Backlog and Caseload Measurement

Total caseload of the Commission during any fiscal year is the combination of new cases received (filings) plus those pending from the previous year (past backlog). The total output of the Commission is all cases disposed of during the year (disposition) and those cases pending final action at the end of the year (new backlog). The percentage of cases disposed of during FY 76 was 53% as compared with 49% in FY 75.

While the data has not been broken down finely to ascertain the exact age of all cases upon disposition, it appears that few backlogged cases are more than six months old. The exceptions almost invariably involve heavily litigated matters or matters postponed at the joint request of the parties.

IV. Recent Decisions of the Labor Relations Commission

The impact of Chapter 150E of the General Laws (the Law) has continued to grow since its passage in 1973 as more public employees organize and assert their bargaining rights. It is essential that all parties to labor disputes know and understand the law as it appears in the statute and as it has been interpreted by the Labor Relations Commission (Commission). This brief summary is designed to acquaint the reader with some of the decisions under the Law so that all might have a better understanding of the difficulties inherent in its administration.

Definitions

The Commission has had the opportunity to interpret many of the terms defined in Section 1 of the Law. The most frequently litigated terms are "managerial employee" and "confidential employee." In Town of Wellesley School Committee, 1 MLC 1389 (1975), the Commission applied the three statutory criteria to determine whether the principals, assistant principals, directors, coordinators and department heads of a large suburban school system were managerial employees. With respect to the first criterion, policy formulation, the Commission found that a managerial employee is one who makes decisions "of major importance when examined in light of the public enterprise." None of the employees met this test. Similarly, the Commission found that the employees did not play a substantial role in the area of collective bargaining, nor did they exercise an independent appellate role in the area of personnel administration.

The second criterion was further explained in Town of Holbrook, 1 MLC 1468 (1975) in which the Commission held that allowing an administrator to identify problem areas of a teachers' contract did not compel the administrator's exclusion as a managerial employee.

The third criterion, the exercise of authority in the area of personnel administration, was clarified in New Bedford School Committee, 2 MLC 1215 (1975). There the dispute centered over whether employees who have some voice in evaluating subordinates should be considered managerial. In deciding that they were not, the Commission noted that the employees in question were themselves subject to significant review and that their decisions and recommendations were often not followed. Indeed, the Commission said that the employees were exercising nothing more than limited supervisory authority.

The Commission will examine the duties involved in a particular job in making the determination whether or not a certain employee should be considered managerial. In Taunton School Committee, 1 MLC 1480 (1975), the Commission said that although an individual had in one isolated instance participated in resolving a grievance, that fact alone, absent any policy-making power would not inevitably lead to a managerial classification. In Town of Wellesley, CAS-2001, 2 MLC___(1976), the Commission held that a job title will not be excluded from a unit as managerial in the absence of an individual occupying the position.

Confidential employees are those who "directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage..." The term "confidential employee" was clarified by the Commission in Silver Lake Regional School Committee, 1 MLC 1240 (1975) where the issue was whether certain employees of the school committee's central office should be excluded from coverage of the Law. One of these employees was secretary to the assistant superintendent who spent a substantial amount of time preparing for collective bargaining with employees of the school district. The secretary typed the contract proposals proffered by the district, and the Commission concluded that the secretary was a confidential employee. Another employee, however, was not privy to bargaining information and the Commission decided that access to financial data, personnel records and similar non-labor relations material

was not sufficient to earn the designation of "confidential employee."

In City of Springfield, 2 MLC 1233 (1975), the Commission had the opportunity to decide whether employees hired under the Federal CETA program were covered by the Law. It was decided that such employees have sufficient interest in the terms and conditions of their employment to qualify as employees along with all other members of the bargaining unit. The rules and regulations of CETA, although placing some restrictions on the employer, do not bar the employer from setting such terms and conditions of employment as wages and hours. Under the CETA program, Springfield had the ultimate decision as to whom it would hire and under what conditions employees would work. Therefore the Commission found that the city was the public employer.

In City of Fitchburg, 2 MLC 1123 (1975), the Commission held that all employees except those classified as managerial or confidential are public employees under the Law. The fact that employees are in a probationary status does not deny them the protections of the Law.

Appropriate Bargaining Unit

The Commission has broad discretion in determining the appropriate bargaining unit under the Law. The scope of this discretion was set forth by the Supreme Judicial Court: "A wide field of inquiry is open to the Commission in designating units appropriate for collective bargaining. We cannot attempt to define or to enumerate the subjects proper for consideration." Jordan Marsh Co. v. Labor Relations Commission, 316 Mass. 748, 750 (1944). The legislature, however, set forth some applicable guidelines which are codified in Section 3 of the Law.

The Commission has elaborated on these guidelines in Massachusetts Board of Regional Community Colleges, 1 MLC 1146 (1975). In that case the issue was whether the professional faculty at the statewide network of community colleges would bargain at the individual college level or at a statewide level in one overall unit. The Commission, in determining the unit appropriate for collective bargaining, must further the fundamental purpose of "providing for stable and continuing labor relations" while according "due" consideration to the tripartite statutory criteria: (1) "community of interest"; (2) "efficiency of operations

and effective dealings"; and (3) "safeguarding the rights of employees to effective representation". In establishing units appropriate for collective bargaining under the Law, the Commission endeavors to strike a balance between two potentially conflicting policies. On the one hand is the statutory mandate to "safeguard the rights of employees to effective representation", which the Commission construes to require consideration of "extent of organization" or the wishes of the employees as a factor in unit determinations. On the other hand is the statutory mandate to preserve "efficiency of operations and effective dealings" which requires the Commission to weigh a potentially adverse impact of a proposed unit upon the employer's operations and performance of its primary responsibility. No coherent unit structure can fully accommodate the conflicting statutory influences. Accordingly, the Commission, in an effort to harmonize the Section 3 criteria, establishes as "appropriate" for collective bargaining units which not only are predicated upon a substantial "community of interest" that, to the extent possible, best safeguards the rights of employees to "effective representation" and of the employer and public to "efficiency of operations" but which also serve the fundamental statutory objective of "stable and continuing labor relations." The Commission has found that broad, comprehensive, rather than smaller, fragmented units will better serve the public interest and the overriding legislative policy favoring "stable and continuing labor relations." However "appropriate" units shall not include employees with a diversity of employment interests so broad as to produce inevitable conflicts irreconcilable with the effective negotiation or administration of collective agreements.

Generally, the Commission seeks the largest unit practicable provided that there is sufficient community of interest among the employees included. Town of Athol, 2 MLC 1062 (1975). In Cohasset Department of Public Works, 1 MLC 1184 (1974) the Commission found that the department should have one bargaining unit, rather than units for each of the four subdepartments. Balkanization has not been favored by the Commission. See also Town of Dartmouth, 1 MLC 1257 (1975) and Town of Harwich, 1 MLC 1376 (1975).

Section 3 of the Law specifically excludes certain personnel from coverage under the Law and sets special standards for units of firefighters. In the corrections field, as well as in the area of uniformed campus police,

the Commission has taken into account the unique nature of the jobs and working conditions involved in making the determination as to the appropriate unit. Massachusetts Commissioner of Administration and Finance, 1 MLC 1476 (1975); University of Massachusetts, Boston, 2 MLC 1001 (1975). School systems also present a special case. In general, the Commission prefers to place teachers and administrators in separate units, but will deviate from this practice in the case of small towns with few school employees. There is a thorough discussion of this practice in Chicopee School Committee, 1 MLC 1195 (1974).

Present in many decisions under Section 3 is another theme: the statutory criteria must be applied with considerable flexibility. In City of Worcester, 1 MLC 1034 (1974), a vocational school librarian was placed in a unit with vocational school teachers rather than with other school librarians; not only was her job dissimilar in many respects from other librarians, but she had more student contact than the usual librarian.

The Commission in Town of Saugus School Committee, MCR-2118, 2 MLC____(1976) found that clerical employees should be severed from a unit of custodial and cafeteria employees. The Commission considered, among other factors, the homogenity of the group; the history of collective bargaining; the separateness of the identity of the group while included in the unit; and the degree of integration in which the employees in the broad unit are involved.

When a new employee classification is created, it is the Commission's policy to include the new classification in an existing unit without an election if the employees involved are normal accretions to such unit, by amending the certification upon request. Because accretion results in the inclusion of employees within an existing bargaining unit without providing the employees with an opportunity to vote for their exclusive bargaining representative, the Commission carefully scrutinizes the mutual intent of the parties at the time of certification or recognition, or their subsequent conduct. This is done in order to protect the right of employees to choose freely their bargaining representative and to give effect to the parties' clearly expressed intention as to the unit structure. City of Somerville, 1 MLC 1234 (1975). It follows that clarification is not the proper procedure for accomplishing the petitioner's purpose where the classifications sought to be accreted existed at the time the unit was recognized

or certified or where the parties have executed a collective bargaining agreement which expressly excludes said classifications unless the basic job functions of the petitioned-for employees have materially changed and would amount to a new job classification. Town of Agawam, 2 MLC 1367 (1976).

The Commission has also dealt with employees who are not full-time workers. In Town of Lincoln, 1 MLC 1422 (1975), the Commission refused to include "call firefighters" in the unit with full-time firefighters. The Commission, although reaffirming their status as employees under the Law, concluded that they lacked a community of interest with regular firefighters having significantly different bargaining concerns. Furthermore the instability of the work force and extreme variations in individual response to a fire compelled the conclusion that a unit of Lincoln call firefighters could not appropriately exercise collective bargaining rights. In dealing with seasonal personnel, the Commission looks closely at the turnover rate of the seasonal employees. In Bay State Harness Horse Racing and Breeding Association, 2 MLC 1340 (1976), the Commission noted that 70% of the seasonal employees involved had worked for the employer for at least two consecutive seasons. In contrast, see City of Gloucester, 1 MLC 1170 (1974), where the Commission found that summer employees did not constitute an appropriate unit because of the unique funding problems of municipal government.

Selection of an Exclusive Representative

Proceedings under Section 3 of the Law have often involved the contract bar doctrine, which prohibits the direction of an election when a valid collective bargaining agreement is in effect, except for good cause. In Easton School Committee, 2 MLC 1111 (1975), a hearing officer of the Commission noted that this rule is discretionary, to be applied or waived as the facts of a given case may dictate in the interests of fairness and stability of collective bargaining agreements.

The general rule has been adopted that a contract will not operate as a bar where there is a fundamental intra-union dispute at the international level, accompanied by a related disaffiliation at the local level. The existence of "schism" is essential, however, for the Commission has refused to waive the contract bar even where the vast

majority of unit employees have expressed clear dissatisfaction with their representative. The Law is intended to provide the benefit of stability for the employer and employees alike. A thorough discussion of this subject may be found in City of Worcester Police Department, 1 MLC 1069 (1974).

A contract, to operate as a bar, must be signed by all parties. Even when, as in Town of Maynard, 2 MLC 1253 (1975), the terms were agreed on, the parties had agreed to sign, the contract was in near final form and some provisions had already been implemented, the contract was held to be ineffective as a bar since it was unsigned. See also, Hearing Officer's Ruling on Motion to Dismiss in City of Somerville School Committee, 2 MLC 1335 (1976). Generally, no election will be directed in a unit within one year of a prior election. However, a rival petition for certification will be processed by the Commission even though filed prior to the expiration of a year provided the election is conducted after the statutory twelve month period. There must be, however, no contract bar to the election. Gardner Department of Public Works, 1 MLC 1115 (1974). A petition must be received at the Commission's office within the 150 to 180 day open period to be considered timely filed. City of Springfield, 1 MLC 1446 (1975).

An election normally is sought only by employees; however, employers may also file petitions. The Law requires the Commission to conduct a unit hearing upon receipt of an employer's petition if a question of representation is raised by the petition. The Commission has concluded that no question of representation is raised and accordingly dismissed an employer's petition where no employee organization demanded recognition or claimed majority status in the unit described in the employer's petition. See Massachusetts Commissioner of Administration and Finance, 1 MLC 1190 (1974).

In conducting elections, the Commission has preferred to use mail ballots when the members of the bargaining unit are dispersed over a large area, as in Department of Public Welfare, 1 MLC 1127 (1974) where the statewide unit included employees at all welfare offices.

Objections to an election or conduct of an election must be filed within five days after the tally of the ballots has been furnished. Objections may be dismissed if untimely filed. Commonwealth of Massachusetts, 2 MLC 1322 (1976). The failure of a petitioner to comply with the

filing requirements of sections 13 and 14 of the Law does not require that an election be set aside. In Commonwealth of Massachusetts, 2 MLC 1322 (1976) the Commission conditioned certification upon the expeditious compliance with the Law's reporting provisions. The Commission will not conduct a post-election hearing if the objections to the election raise no legally significant issues. Rockland Police Department, 1 MLC 1217 (1974). The Commission will not consider matters raised as objections to the election if they should have been raised at the pre-election representation hearing. Rockland Police Department, supra. A party seeking to set an election aside for conduct occurring prior to or during the course of the election must furnish substantial evidence that the incidents taken as a whole had a substantial impact on the election. City of Boston, Department of Health and Hospitals, 2 MLC 1275 (1976). Where one of the parties to an election reproduces the Commission's official ballot with partisan election propaganda superimposed on the sample ballot, the Commission has found that such action taken along with other factors such as the timing of the propaganda and the closeness of the election is cause to set the election aside. Commissioner of Administration and Finance, 2 MLC 1261 (1975).

In City of Medford, 2 MLC 1328 (1976), an election was held in a unit which had been consented to by all parties. The representative was selected but negotiations broke down when the employer challenged the composition of the unit. The Commission refused to allow the employer to litigate the unit question in the context of a prohibited practice hearing after having consented to an election, even though the opinion expressed some misgivings about the composition of the unit.

Commission Procedures and Remedies

Section 11 of the Law provides for the investigation of complaints alleging that a practice prohibited by Section 10 has been committed. The allegations in a complaint filed under this section need not conform to the technical rules of pleading; the complaint is legally sufficient if it enables the respondent to understand the issues raised so as to be able to prepare its defense. Town of Burlington School Committee, 1 MLC 1179 (1974).

Section 4 and Section 11 provide that a hearing conducted under the Act may be designated as an Expedited Hearing, in which case the hearing may be conducted and decided by any member or agent of the Commission. Such Expedited Hearings are designed to relieve the crowded docket of the agency, and have been found by a hearing officer to meet the due process requirements for a fair hearing. Town of Sharon, 2 MLC 1205 (1975). Rulings made by Hearing Officers during such hearings may not be appealed to the full Commission prior to the conclusion of the case before the Hearing Officer. City of Somerville School Committee, 2 MLC 1335 (1976).

The agency has broad powers to order relief if it finds that a prohibited practice has been committed. It may issue cease and desist orders and may order reinstatement with full back pay, preservation of records necessary to determine back pay awards, posting of notices, payment by the employer to the union of dues and fees which would have accrued absent the unlawful conduct, and other forms of affirmative relief. Ronald J. Murphy, 1 MLC 1271 (1975); Boston School Committee, 1 MLC 1287 (1975).

The Commission conducts supplemental proceedings to determine the amount of back pay due to a discharged employee. Back pay is determined by using the following formula: Net Back Pay = Gross Back Pay - (Interim Earnings - Expenses). In applying this formula, gross pay is to include such items as overtime, bonuses, vacation pay, holiday pay, retirement benefits, insurance benefits and tips. Interim earnings shall include only that income attributable to new employment. Thus, income, for example, from unemployment compensation, welfare or disability payments is not included in interim earnings. Six percent interest may be added to the back pay award. The employee's burden is merely to establish gross pay. The employer must establish interim earnings and other set-offs. The employee must mitigate damages by seeking suitable employment. Town of Townsend, 1 MLC 1450 (1975). The Commission may estimate back pay when exact computation is not possible, as long as there is sufficient evidence upon which to base a reasoned conclusion. The employer waives the right to contest any figures if it does not appear at the hearing on this matter. Town of Townsend, supra.

When a complaint raises issues that were decided or may be decided through fair and regular arbitration proceedings agreed to by the parties, and where the decision

is not clearly repugnant to the purposes and the policies of the Law, the Commission will defer to the arbitrator's decision. The Commission's policy is designed to further a labor policy of favoring arbitration, and to discourage forum shopping and relitigation of issues. This deferral policy will be applied in prohibited practice cases and, where appropriate, in representation cases. Boston School Committee 1 MLC 1287 (1975); Cohasset School Committee, MUP-419 (6/19/73).

Requests for Binding Arbitration

Section 8 of the Law authorizes the Commission, upon request by an employer or employee organization, to order binding arbitration of a dispute concerning the interpretation or application of a collective bargaining agreement which does not contain a grievance procedure "culminating in final and binding arbitration". In Board of Trustees of State Colleges (Worcester State College), 1 MLC 1474 (1975), the Commission held that binding arbitration was appropriate even though the collective bargaining agreement had expired subsequent to the grievance. "To hold otherwise" the Commission stated, "would encourage and reward delay in the processing of grievances." The Commission also established that its inquiry was limited and it would order arbitration if the dispute is "arguably arbitrable". In Board of Trustees, State Colleges, 2 MLC 1344 (1976) the Commission upheld its "show cause" procedure for ordering binding arbitration under Section 8. The Commissior has since modified its procedure which now provides that the Commission shall notify the parties that it is in receipt of a request for binding arbitration. A period of ten days from receipt of said notification is allowed for an opposing party to set forth in writing any objections to the request. If the party fails to submit objections to the request for binding arbitration and the Commission determines that an order for binding arbitration should issue, such orders will not provide for a show cause hearing. If objections to the request for binding arbitration are timely filed, the Commission shall determine on a case by case basis whether an order for binding arbitration will issue and if an order issues, whether it will provide for a show cause hearing.

In two cases, the Commission has declined to issue orders for binding arbitration. In Sturbridge School Committee, 1 MLC 1381 (1975) the Commission determined that no arbitrator could reasonably concur with the requesting

party's position and therefore to order arbitration would require the parties to perform a futile act. In City of Worcester, 2 MLC 1174 (1975) the Commission refused to order binding arbitration of the non-renewal of a nontenured teacher where the non-arbitrability of such a subject was a bargained-for concession between the parties. Finally, the Commission has refused to require an employee election of binding arbitration in lieu of other remedies. Board of Trustees State Colleges, 1 MLC 1474 (1975). The interest of an employee organization in policing its contracts may be distinct from those of an individual who may benefit as a result of a contract.

Protected Activities

Section 2 of the Law provides that employees shall have the right of self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing. Furthermore, this section provides employees with the right to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion. Protected activities include picketing, City of Fitchburg, 2 MLC 1123 (1975); editing and publishing a union newsletter, Mount Wachusett Community College, 1 MLC 1496 (1975); making pro-union speeches, Mount Wachusett Community College, supra; initiating a grievance under a collective bargaining agreement, Town of Halifax, 1 MLC 1486 (1975); and vigorous verbal prosecution of grievances not within the context of a contractual grievance procedure. Harwich School Committee 2 MLC 1095 (1975). Improper tactics, such as acts of vandalism, are not protected activity. City of Fitchburg, 2 MLC 1123 (1975). However, in order to defend against charges of unfair labor practices on the basis of vandalism, the employer must demonstrate that the acts could be fairly attributed to the employees who are disciplined. City of Fitchburg, 2 MLC 1186 (1975).

Prohibited Practices

Unlawful Discipline

Section 10 (a) (1) of the Law makes it a prohibited practice for an employer to interfere, restrain or coerce any employee in the exercise of his or her rights; Section 10 (a) (3) makes it a prohibited practice to discriminate against

any employee to encourage or discourage membership in an employee organization. Much of the case law interpreting these sections has arisen in the context of complaints charging the unlawful discharge of an employee for exercising his or her rights. The law is clear that if the discharge is even partially in response to the employee's protected activity, there is a violation of the Law. Ronald J. Murphy, 1 MLC 1271 (1975). Thus, the existence of valid grounds for the discharge is not a defense to a prohibited practice charge, unless the reason advanced compelled. discharge independently of the concerted activity. The mere existence of cause does not justify discharge where substantial evidence shows that anti-union considerations were involved. The employer's motive is a question of fact, to be determined by direct and circumstantial evidence. The Commission may find a violation of the Law even where there is no direct evidence of unlawful motive. Ronald J. Murphy, 1 MLC 1271 (1975); Harwich School Committee, 2 MLC 1095 (1975).

The burden of establishing a violation by a preponderance of the evidence is on the charging party. Once the discharged employee has established this prima facie existence of discriminatory motivation, the burden shifts to the employer to provide an adequate nondiscriminatory explanation. Town of Sharon, 2 MLC 1205 (1975); Town of Tewksbury, 2 MLC 1158 (1975).

Factors relied upon to determine the existence of improper motive include timing of the discharge coincidentally with the protected activity; visibility of the employee in his or her support of the union or other protected activity; abruptness of the discharge; the employer's general hostility toward the union or toward concerted activity; failure to give the individual warning and an opportunity to correct the objectionable practice; inconsistent or shifting reasons for the discharge; sudden resurrection of previously condoned transgressions; staleness of reasons given; surveillance of the employee; compilation of information concerning the employee; trivial reasons for the discharge; reliance upon behavior occurring after the decision to fire was made; unwarranted severity of discipline in relation to transgressions; previously uncriticized work record of the employee; inadequate employer investigation of the incident(s) relied upon to justify the discharge. Town of Sharon, supra; Mount Wachusett Community College, 1 MLC 1496 (1975); Harwich School Committee, supra; Ronald J. Murphy, supra; Town of Halifax, supra; Minuteman Regional Vocational School District, ___MLC___, MUP-723 (1976). The inference that

one employee was unlawfully discharged is not rebutted by evidence that the employer did not discriminate against another employee who also actively supported the union or engaged in other protected activity. Town of Halifax, supra.

Unlawful Interference, Domination or Assistance

Section 10 (a) (2) makes it a prohibited practice to dominate, interfere or assist in the formation, existence or administration of any employee organization. Negotiating with a challenging union in the face of a question of representation constitutes unlawful assistance to that union, even where done in the interest of maintaining labor stability. City of Worcester, 1 MLC 1265 (1975). It has also been found to be a violation of Section 10 (a) (2) where an employer refused to bargain over certain subjects with a union representing one unit of employees, while bargaining over the same subjects with a union representing another unit of employees. Town of Natick, 2 MLC 1149 (1975)

Refusal to Bargain

Section 6 of the Law imposes a duty on the employer and the exclusive representative of the employees to negotiate in good faith with respect to wages, hours, standards of productivity and performance and other terms and conditions of employment. This section has been interpreted through numerous cases brought pursuant to sections 10 (a) (5) and 10 (b) (2), which make it a prohibited practice for either employers or employee organizations to refuse to bargain collectively in good faith. Those decisions have established that the duty is not met by mere surface bargaining. The parties must enter negotiations with a sincere purpose of finding a basis of agreement. The determination as to whether there has been surface bargaining is to be made by evaluating the party's entire course of conduct. City of Chicopee, 2 MLC 1071 (1975).

If a party's total conduct during bargaining evidences an intent to reach agreement by participation in negotiations in good faith, insistence to the point of impasse on a contract provision concerning a condition of employment does not warrant the conclusion that the Law has been violated. Agreement on many major bargaining subjects may negate an inference that insistence on a single specific term constitutes a refusal to bargain. King Philip Regional School Committee, 2 MLC ___ (1976).

The employer may not alter terms or conditions of employment without negotiating with the union. City of Chelsea, 1 MLC 1299 (1975); Town of Marblehead, 1 MLC 1140 (1974). The duty to discuss the change remains even though the change may be one welcomed by the union, such as an increase in salary. City of Chicopee, supra. The unilateral change of a working condition is a per se violation of Section 10 (a) (5) and thus the employer's "good faith" is irrelevant. Town of Natick, 2 MLC 1086 (1975). In order to make out a case of prohibited unilateral change in conditions, the following elements must be present: (1) a pre-existing condition of employment; (2) a unilateral alteration and (3) an effect on a mandatory subject of bargaining. Town of Marblehead, 1 MLC 1140 (1974). Where there has been no pre-existing practice there can be no unilateral change of that practice. Town of North Andover, 1 MLC 1103 (1974). A hearing officer has held that the unilateral change of firefighters' working conditions is a prohibited practice under the Law where there is a statutory impasse procedure to resolve all labor disputes including the terms of a contract. Town of Wilbraham, 2 MLC 1169 (1975).

Either party may seek to include within an agreement permissive subjects of bargaining but may not posit them as preconditions to the negotiation of an agreement. Insistence on the inclusion of a non-mandatory subject to point of impasse constitutes a per se violation of the duty to bargain in good faith. Town of Marion, 2 MLC 1256 (1975); IAFF, Local 1009 and City of Worcester, 2 MLC 1238 (1975).

The duty to bargain includes the duty to request funding and to otherwise facilitate the implementation of the provisions of an agreement. Failure to do so, absent a claim of statutory or legal impediment, constitutes a per se violation of the duty to bargain. City of Chicopee, supra; Mendes v. Taunton, 1974 Mass. Adv. Sh. 1291, 315 N.E. 2d 865 (1974). The failure to fund an agreement from existing funds also constitutes a refusal to bargain in good faith unless the agreement specifies the exact limitation on the method of fundir . City of Worcester School Committee, 2 MLC 1283 (1976).

Refusal to Participate in Good Faith in Factfinding

Section 9 of the Law establishes a mechanism for the resolution of bargaining impasse through mediation and, if necessary, fact-finding procedures. Under Sections 10 (a) (6) and 10 (b) (3), it is a prohibited practice to refuse to participate in mediation and fact-finding in good faith. The fact-finding procedure should be a fluid one, inasmuch as it is designed to encourage settlement. Therefore, mere alteration of proposals during the fact-finding process is not a prohibited practice. IAFF, Local 1009 and City of Worcester, 2 MLC 1238 (1975). Neither is it a breach of the duty to participate in good faith to release information to the media at its request, if the release neither frustrates fact-finding nor contributes significantly to a deadlock of negotiations. IAFF, Local 1009 and City of Worcester, supra. This assumes, of course, that the parties had not established ground rules concerning news releases during negotiations. Town of Maynard, 2 MLC 1141 (1975) affirmed by the Commission 2 MLC 1281 (1976). However, egregious misrepresentation of facts to the fact-finder may constitute a prohibited practice. Factors which may mitigate against such a finding include: complexity of the issues; commission of a similar error by the complaining party; opportunity for rebuttal; and absence of reliance by the fact-finder upon the misrepresentation. IAFF, Local 1009 and Worcester, supra. Submission of permissive subjects to the fact-finder constitutes a breach of the duty to participate in good faith in fact-finding proceedings, in the case of police and firefighters, where one party submits non-mandatory subjects over the timely objection of the other party. IAFF, Local 1009 and Worcester, supra.

V. ANNUAL EXPENDITURES

As the tables accompanying this report illustrate, the Commission received increasing amounts from the general appropriation until Fiscal 76.

Annual Expenditures

	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975	FY 1976
TOTAL	$269,855.00	$290,432.00	$319,154.00	$343,276.00	$449,326.00	$448,523.00

The number of staff increased slightly until FY 76:

	1966	1971	1972	1973	1974	1975	1976
Total Staff	17	20	22	23	24	30	27

VI. ADDITIONAL FUNCTIONS AND ROLES

In addition to its adjudicative role, the Commission has informational, research and educational functions relating to the collective bargaining laws. Furthermore under the law, the Commission is now directed (1) to investigage any strike, work stoppage or withholding of services by public employees and "set requirements that must be complied with"; (2) to require the filing of financial reports and disclosure statements by employee organizations; and (3) to determine the appropriateness of agency service fees charged to nonmembers by unions which must represent them in bargaining.

A. Representation Proceedings for Commonwealth Employees

The Labor Relations Commission has nearly completed the task of establishing new bargaining units for state employees and certifying exclusive bargaining representative. On March 3, 1975, the Commission promulgated an amendment to its rules and regulations delineating ten state-wide bargaining units. Shortly thereafter, the Commission began processing petitions filed by employee organizations seeking to represent the various units. Commission staff spent countless days holding hearings, doing research and writing decisions which placed each of the thousands of job classifications into an appropriate unit.

As the unit determination process was nearing completion, Commission staff prepared to hold elections to enable the more than 50,000 state employees to choose their bargaining representative.

In a major innovation, the Commission determined to hold the elections by mail ballot rather than using on-site elections; the Commission thereby realized substantial economies of time and money. The election was the second largest mail ballot election ever held in the United States.

With the cooperation of the Commonwealth and the employee organizations, a computer-generated list was prepared containing the names and addresses of all eligible voters. To correct errors in the list and to safeguard the right of each eligible employee to vote, the Commission hired a team of lawyers, law students and labor relations specialists to answer voters' questions and make necessary adjustments. On October 31, 1975, the Commission mailed out more than 50,000 ballots and over the next two weeks continued to make every effort to ensure that each eligible voter received a ballot.

On November 17, the Commission received from the Post Office all the returned ballots and commenced the counting, a process that lasted a week. After resolution of eligibility challenges, clear winners were declared in Units 1, 2, 6, 7, 8 and 9, and employee organizations were certified in those units in early 1976. The Commission immediately geared up to run elections in the remaining unresolved units, mailing new ballots on January 30, 1976 and counting the ballots beginning of February 17. Employee organizations were eventually certified in Units 3, 4, 5A and 10. The only state employee unit without a representative at this writing is Unit 5, Law Enforcement, which is awaiting resolution of objections to the election.

B. Massachusetts Labor Relations Commission's Advisory Council on Employment Relations

The Commission amended its Rules and Regulations during February 1976 to provide for the establishment of the Advisory Council on Employment Relations. The purpose of the Advisory Council is to study and advise the Commission on matters concerning the relations of employers and employees and to consider the practical application of M.G.L. Chapter 150E and the Commission's Rules and Regulations. The 24 member council is composed of an equal number of representatives of employee organizations, employers, and non-partisan practitioners/academicians.

Since the passage of the Massachusetts Public Sector Collective Bargaining Law in 1973, the caseload of the Commission has grown greatly. The size of the Commission's staff and budget have remained relatively unchanged during this period. Accordingly, the Council's chief function will be to assist the Commisison in reviewing its case-handling procedures with the objective of recommending for adoption more effective and efficient methods for processing the growing caseload.

At the Council's second meeting, Labor Relations Commission Chairman James S. Cooper announced the formulation of five Council Subcommittees. The purpose of each is to examine the Commission's procedures regarding one of the following case-types: representation cases; prohibited practice cases; strike investigations, and requests for binding arbitration. Also formed were a steering committee and a subcommittee to study the structure of the Commission and its relationship with other agencies involved in employer-employee relations.

Assigned to assist each of the subcommittees will be a Commission staff attorney and a legal intern. The subcommittees; with the above staff to assist in research and report preparation, will meet periodically during the summer months.

C. Public Information

In last year's report we were able to report that public information and educational functions were assigned to a single employee. Unfortunately, we must now report that due to budget cuts the position of Public Information Officer has been eliminated. Despite the elimination of this important position the Commission has attempted to meet the great demand for information, opinions, definitions, and statistical data in addition to routine inquiries about pending matters.

The Commission's information policy, based on the Freedom of Information Law, is to educate the public with respect to the collective bargaining process, acquaint it with new developments in the law and make employees and employers aware of their rights and obligations under Chapter 150E. Our hope is to thereby reduce litigation and strife.

As a means of educating the general public, and labor relations practitioners the Commission in conjunction with the Boston Bar Association and Massachusetts Labor Relations Reporter prepared a booklet entitled "A Practitioner's Guide to Public Sector Collective Bargaining". The publication contains the new statute, the Commission's rules and regulations as well as a

summary of recent decisions of the Commission. In addition, to the "Practitioner's Guide" the Commission in collaboration with the University of Massachusetts' Institute for Governmental Services helped revise a booklet entitled "Guide to the Massachusetts Public Employee Collective Bargaining Law". This revised booklet, in additon, to containing the statute and rules and regulations also notes changes that have occurred in Massachusetts Labor Law over the years and has a section of questions and answers pertaining to Chapter 150E and the role of the Commission in administering it. Both booklets were prepared at no expense to the Commonwealth.

D. Reporter Service

Decisions, court cases, certifications hearings, elections, complaints, petitions for certification and all activities before the Labor Relations Commission are reported in a monthly digest published privately and independently as the Massachusetts Labor Relations Reporter. The Commission has cooperated fully in supplying information to the publishers.

Massachusetts Labor Cases (MLC), an up-to-date service providing the complete text of all decisions of the Labor Relations Commission, began publication on May 1, 1975. Massachusetts is one of four states (Pennsylvania, Florida and New Jersey) with a formal outside reporting service for agency decisions. In New York State publication is by the PERB itself at government expense. Commission decisions are also reported frequently in the Government Employee Relations Report, the Bureau of National Affairs Labor Relations Reference Manual, and the Commerce Clearing House Labor Cases.

E. Community Relations

To promote awareness among the general public of their rights and responsibilities under Chapter 150E, the Commission members and attorneys are active participants in labor-related conferences across the state. Chairman Cooper participated in a symposium on municipal management at the University of Massachusetts. In addition the Commission Chairman has spoken at the Boston Bar Association Workshop for Labor Relations Practitioners, the Massachusetts Fire Chiefs Conference, and the New England Public Employer's Association. Other Commission agents have also addressed groups around the state on the role of the Commission.

F. Stike Investigation

According to Chapter 150E, Section 9A, public employees or their organizations are prohibited from striking, or inducing, encouraging, or condoning any strike, work stoppage, slowdown, or withholding of services. Whenever a strike occurs or is about to occur, the new law requires the employer to petition the Commission to make a strike investigation (SI). If, after investigation, the Commission determines that Section 9(A)(a) has been violated or is about to be violated, the Commission "shall immediately set requirements that must be complied with, including but not limited to, instituting appropriate proceedings in the Superior Court."

FY 1976 has been a busy year for both strikes or threatened strike activity. The Commission participated in twenty four cases in FY 76 as compared with only nine in FY 75. Strike investigations are time consuming and with our limited staff contribute to our backlog in dealing with other types of complaints that are filed.

G. Request for Binding Arbitration

Section 8 of Chpater 150E involves the Commission in the dispute settlement procedures of the parties to a collective agreement. The parties may include in any written agreement a grievance procedure ending in final and binding arbitration. "In the absence of such a grievance procedure, binding arbitration of a dispute concerning the interpretation or application of a written agreement may be ordered by the Commission upon the request of either party."

Thus far the Commission has been involved in 27 such RBA cases.

H. Union Registration

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations with an indication of which employee organizations are the exclusive representatives of appropriate bargaining units certified by the Commission. Required information includes: the name and address of each current officer; address to where notices

may be sent; the date of organization; effective dates of certification, and information relative to dates of expiration of any signed agreements. The Commission is responsible for making copies of this information available to interested parties. The volume of such requests increased substantially during recent months. The Labor Relations Commission has developed a standardized form, called the Employee Organization Information Report, Form I. These forms are made available to all employee organizations. Since July 1, 1974, the Labor Relations Commission has received 1023 of these forms.

Each employee organization is also required to file an annual report containing: "the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid to the officers". The Labor Relations Commission has developed a standardized form, in the nature of a balance sheet and operating statement, which indicates the total receipts, the sources of such receipts, and disbursements made during an organization's previous fiscal year. The Employee Organization Annual Report, Form II, must be filed with the Commission within sixty days after the end of each organization's fiscal year. The Commission is required to maintain an up-to-date file of all Annual Reports, making them available to interested parties upon requests. Like the Employee Organization Information Reports, the Commission supplies this form to all organizations.

In the event of failure of compliance with either Section 13 or 14 of Chapter 150E, the Commission is authorized to take appropriate action.

I. A Union Contract File

Public employers have been required to file copies of all collective agreements with the Labor Relations Commission since July 1, 1974. Thus, eventually, the Commission will have a file of all contracts existing between state, local and municipal employers and their respective labor organizations. The Commission has to date received 450 contracts. It should be noted that the inflow of contracts has increased substantially since parties have become more aware of the filing requirement. The Commission has publicized this provision of the law in the Massachusetts League of Cities and Towns Newsletter. The Commission is considering applying for a federal grant to analyze the contracts and publish information with respect thereto which may be of assistance to parties to the collective bargaining process.

J. Special Projects and Research

CASE HANDLING MANUAL PROJECT

Goals of the Project

The object of the project is to produce a manual for use and reference by Commission staff which will standardize and expedite the processing of cases. There has been a substantial turnover in staff in recent years, and the agency is not in a position to operate any extensive training or orientation program. The National Labor Relations Board has been generous in permitting Commission personnel to attend certain training and educational sessions, but the need exists for a ready reference tool geared to the work of the Commission.

Major Features

Those familiar with Commission procedures may expect to see major changes in the following areas:

1. Standard notices will be altered to give parties greater information about their rights, standard procedures and what to expect at subsequent stages of the process.

2. Informal conferences will be scheduled by the agent assigned to the case, with the responsibility to report the case within a specified period of time.

3. Procedures for the conduct of elections will be spelled out for the first time, including the role of observers and board agents.

4. Post-election procedures on challenges and objections will be streamlined to reduce delays in disposition.

The manual will also make major changes which will not be so obvious to practitioners except as they expedite the process. In these areas, major revisions will be made in the Commission's scheduling, docketing, assignment and reporting procedures.

Finally, the package will contain a comprehensive index and table of contents to make it as usable a reference as possible.

TABLE 1

TOTAL FILINGS

(Cases Received)

TOTAL YEAR	76	75*	74*	73	72	71	66
Representation Cases							
(TOTAL)	304	400	297	287	299	201	144
Public	272	379	229	238	245	167	78
Private	32	21	68	49	54	34	66
Prohibited Practice Cases							
(TOTAL)	390	398	276	277	177	110	
Public	350	375	233	244	137	94	
Private	40	23	43	33	40	16	
Total Public Cases	664	771	462	482	382	261	78
Representation	272	379	229	238	245	167	78
Prohibited Practice	350	375	233	244	137	94	0
New Functions**	42	17					
Total Private Cases	72	44	111	82	94	55	79
Representation	32	21	68	49	54	39	66
Prohibited Practice	40	23	43	33	40	16	13
GRAND TOTAL	736	815	573	564	476	316	157

*Note: A moratorium on the processing of most state representation petitions was declared October 10, 1974-March 3, 1975 and a moratorium for all petitions took place in May-July 1, 1974.

**SI and RBA petitions were added to the Public Total and Grand Total for Fiscal 75 and 76. These new functions require the Commission to conduct a Strike Investigation (SI) or to investigate a party's Request for Binding Arbitration (RBA).

TABLE 2

CASELOAD: PERCENTAGE PUBLIC OR PRIVATE

	FY 76	FY 75	FY 74	FY 73	FY 72	FY 71	FY 66
REPRESENTATION CASES:							
Public	89.0	94.75	77.1	83.0	81.9	83.1	54.2
Private	11.0	5.25	22.9	17.0	18.1	16.9	45.8
PROHIBITED PRACTICES:							
Public	90.0	94.2	84.4	88.0	75.1	85.5	.0
Private	10.0	5.8	15.6	12.0	24.9	14.5	100.0
TOTAL CASES:							
Public	90.0	94.6	80.6	85.5	80.2	83.9	49.6
Private	10.0	5.4	19.4	14.5	19.7	16.1	50.4

TABLE 3

TOTAL HEARINGS

	FY 76	FY 75	FY 74	FY 73	FY 72	FY 71	FY 66
I. TOTAL HEARINGS	973	1145	889	787	614	545	138
Formal	96	446	307	246	229	360	138
Informal	642	699	582	541	385	185	0
Expedited	208						
*Special Functions	27						
II. BY TYPE OF CASE AND SECTOR							
A. Representations (Total)	457	564	455	427	395	345	138
Formal	23	244	152	145	134	215	138
Informal	286	320	303	282	261	130	
Expedited	148						
Municipal (Total)	241	361	289	305	287	263	63
Formal	6	159	77	91	79	165	63
Informal	184	202	212	214	208	98	
Expedited	51						
State (Total)	88	173	54	37	19	20	
Formal	13	73	30	20	9	12	
Informal	18	100	24	17	10	8	
Expedited	57						
Private (Total)	129	30	112	85	89	62	75
Formal	5	12	45	34	46	38	75
Informal	8	18	67	51	43	24	
Expedited	40						
B. Prohibited Practices (Total)	489	591	434	360	219	209	
Formal	73	202	155	101	73	149	
Informal	356	389	279	259	146	55	
Expedited	60						
Municipal (Total)	395	438	326	270	157	132	
Formal	58	130	112	70	56	102	
Informal	284	308	214	200	99	30	
Expedited	53						
State (Total)	41	110	50	34	22	21	
Formal	5	55	15	10	7	12	
Informal	31	55	35	24	15	9	
Expedited	5						
Private (Total)	53	43	48	56	42	51	
Formal	10	17	18	21	10	35	
Informal	41	26	30	35	32	16	
Expedited	2						

DETAILED CASELOAD

TABLE 4

I. Representation Caseload

	FY 1976			FY 1975			FY 1974			FY 1973			FY 1972			FY 1971			FY 1966		
	P	R	C	P	R	C	P	R	C	P	R	C	P	R	C	P	R	C	P	R	C
Municipal																					
MCR	15	194	118	10	219	178	32	161*	162	26	180	148	44	181	160	23	125	134	41	78	37
MCRE	4	1	1	1	4	4	2	5	5	2	5	6	3	6	3	0	3	3	0	0	0
State																					
SCR	12	10	4	4	88	42	9	20*	21	10	15	15	10	9	16	17	20	13	0	0	0
SCRE	0	3	2	0	4	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCRX	0	0	0	3	0	2	0	5	6	1	8	7	0	0	0	0	0	0	0	0	0
CAS	15	64	30	1	64	27	3	38	38	3	30	55	28	49	32	11	19	13	0	0	0
Private																					
CR	0	32	23	10	21	25	33	57	67	21	47	37	11	52	61	17	33	26	22	64	42
CRE	0	1	1	0	0	0	1	1	1	2	2	3	3	2	1	2	1	0	0	2	2
TOTAL:	46	304	179	29	400	281	80	287	290	63	287	271	99	299	273	70	201	189	63	144	81

II. Unfair Labor Practice Caseload

Municipal																					
MUP	43	257	173	37	283	119	4	174	232	62	197	158	23	113	126	36	85	61	0	0	0
MUPL	5	48	20	9	38	14	14	26	26	14	20	11	5	10	14	9	7	6	0	0	0
State																					
SUP	6	31	24	4	31	18	12	29	24	7	17	14	4	13	10	1	2	2	0	0	0
SUPL	0	14	3	2	8	7	1	3	3	1	4	3	0	1	1	0	0	0	0	0	0
SUPX	0	0	0	4	0	1	1	1	2	2	6	4	0	0	0	0	0	0	0	0	0
Private																					
UP	6	32	6	15	19	6	0	36	37	1	31	33	3	35	32	0	14	23	0	13	16
UPL	1	8	1	1	4	3	2	7	6	1	2	4	3	5	4	2	2	0	0	0	0
TOTAL:	61	390	227	34	276	330	34	276	330	88	277	277	38	177	187	48	110	92	0	13	16
SI	0	24	24	0	9	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RBA	0	17	17	0	8	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

III. GRAND TOTAL Rep. & UPL'S:

	107	736	447	101	800	466	114	563	620	151	564	548	137	476	460	118	311	281	63	157	97

Footnotes:
P=Pending (pending all cases from the previous Fiscal Year) C=Closed (All cases disposed of during the Fiscal Year)
R=Received (All new cases filed during Fiscal Year)
FY=Each Fiscal Year is from July 1 to June 30.
*A moratorium was placed on the filing of public sector representation petitions in May & June of 1974.

TABLE 5

TOTAL COMMISSION CASELOAD

Year	Total Cases Initiated During Year (Filings)	Total Case Input (Filings & Past Backlog)	Cases Disposed of in Year (Dispositions)	Cases Pending at End of Year (Backlog)
1966	157	160	97	63
1971	311	407	281	118
1972	466	594	460	137
1973	564	671	498	150
1974	573	723	620	113
1975	815	916	449	467
1976	736	837	447	390

TABLE 6

FISCAL YEAR 1976--FURTHER ANALYSIS OF CASELOAD DATA

1. Breakdown by occupational groups of representation cases among municipal and county employees:

Employees	Number of Cases	% of Total
County	10	3.7
Firefighters	14	5.1
Police	36	13.2
School	108	39.7
Other Municipal (Town Hall, DPW, Hospt.)	104	38.2

2. Breakdown by occupational groups of prohibited practice cases among municipal and county employees:

Employees	Number of Cases	% of Total
County	7	2.0
Firefighters	44	12.4
Police	59	16.7
School	121	34.2
Other Municipal	123	24.7

FURTHER ANALYSIS OF FISCAL YEAR 1976
(Cont'd)

3. Origins of Prohibited or Unfair Labor Practice Charges (PP)

Filed By	Against	Number of PP Filed
Employee or Union	Public Employer	288
Employee or Union	Private Employer	32
Public Employer or Employee	Union/Association	62
Private Employer or Employee	Union	8
Total PP's filed against an Employer (Public and Private)		372
Total PP's filed against Employees and/or Unions		70
Percentage of Total PP's:		
	Against Employers	82%
	Against Employees/Unions	18%

4. Percentage increase by category, Fiscal Year 76 over Fiscal Year 75 (See page for definitions of case designations.)

Kind of Case	FY 1975	FY 1976	Increase/Decrease
MCR	219	194	--11.0
MUP	283	257	- 10.1
MUPL	39	48	+ 37.0
SCR	88	10	-780.0*
SUP	44	31	- 41.9
CAS	64	64	0

*The decrease in the number of SCR petitions is due to the fact that there are now only 11 statewide units.

CHART A[1]

CASES FILED (Public Sector)

PUBLIC SECTOR

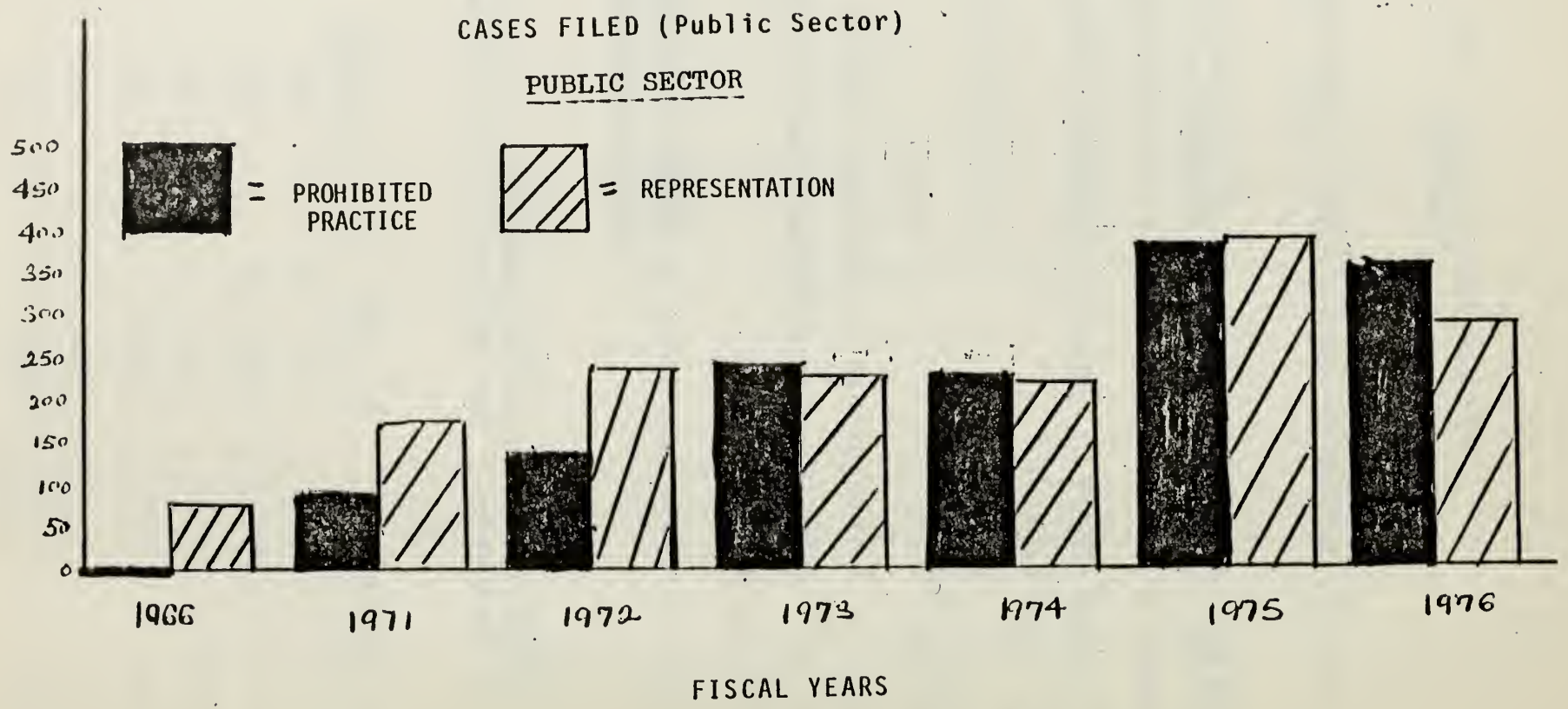


CHART A[2]

CASES FILED (Private Sector)

PRIVATE SECTOR

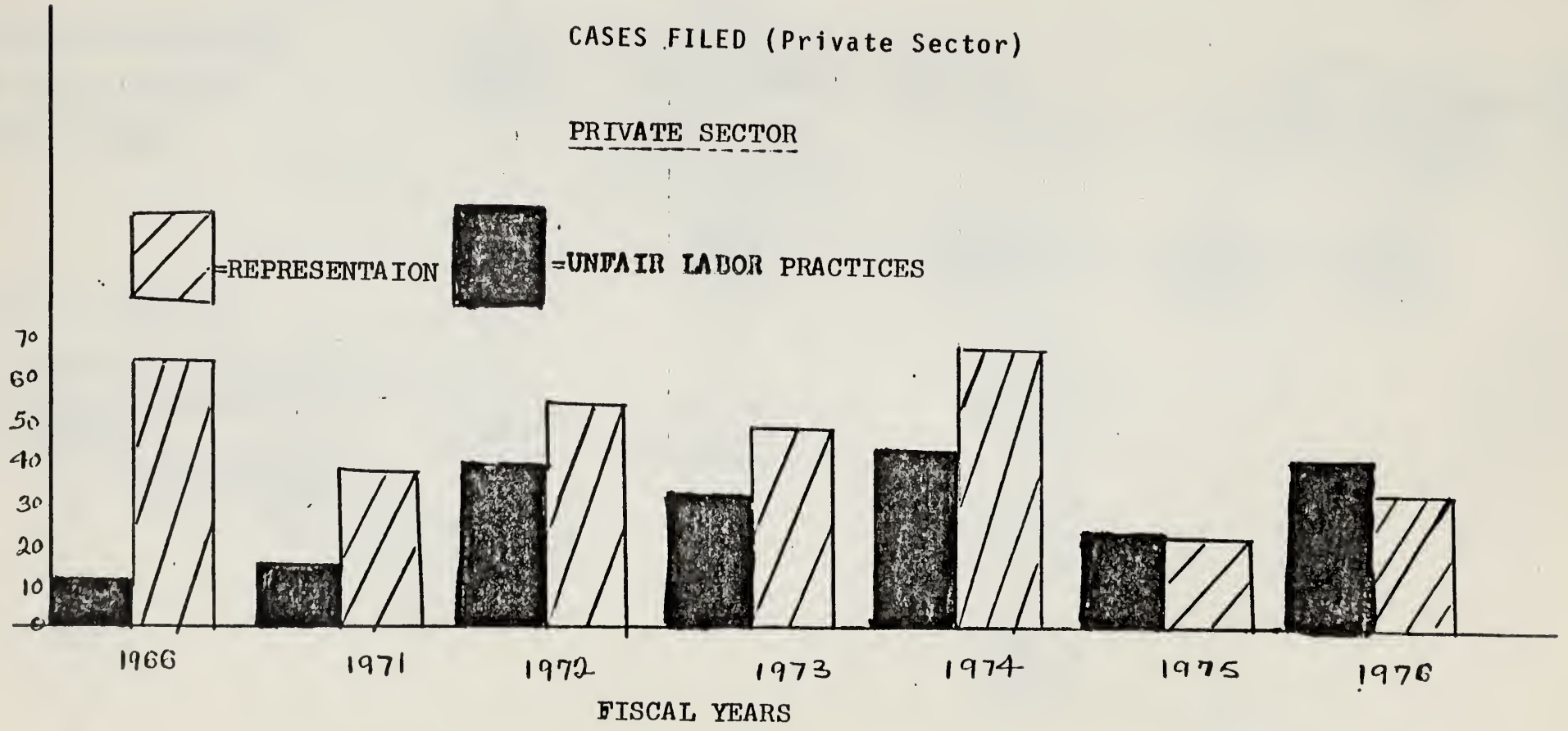


CHART B

FLOW CHART OF CERTIFICATION OF REPRESENTATION

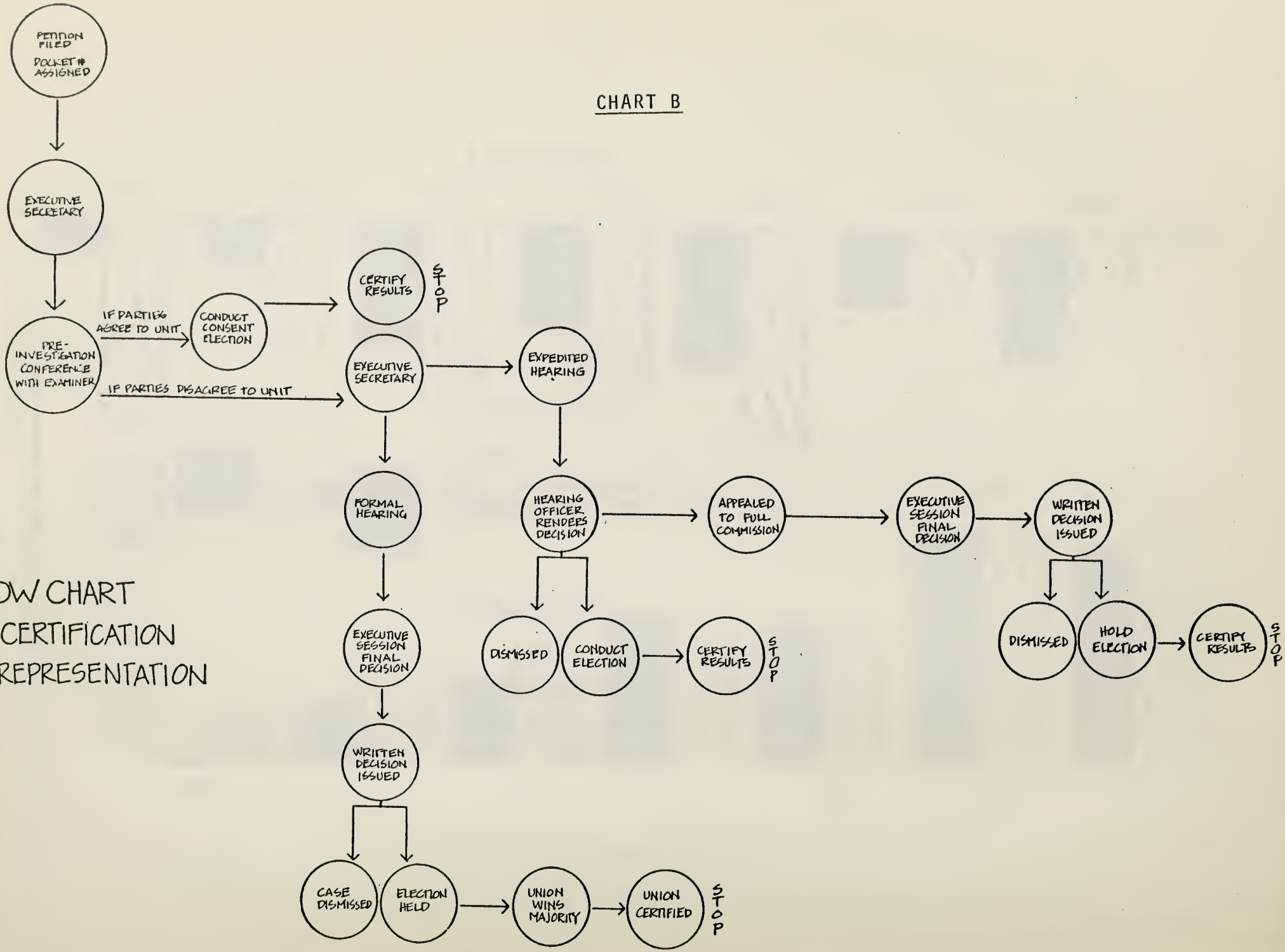
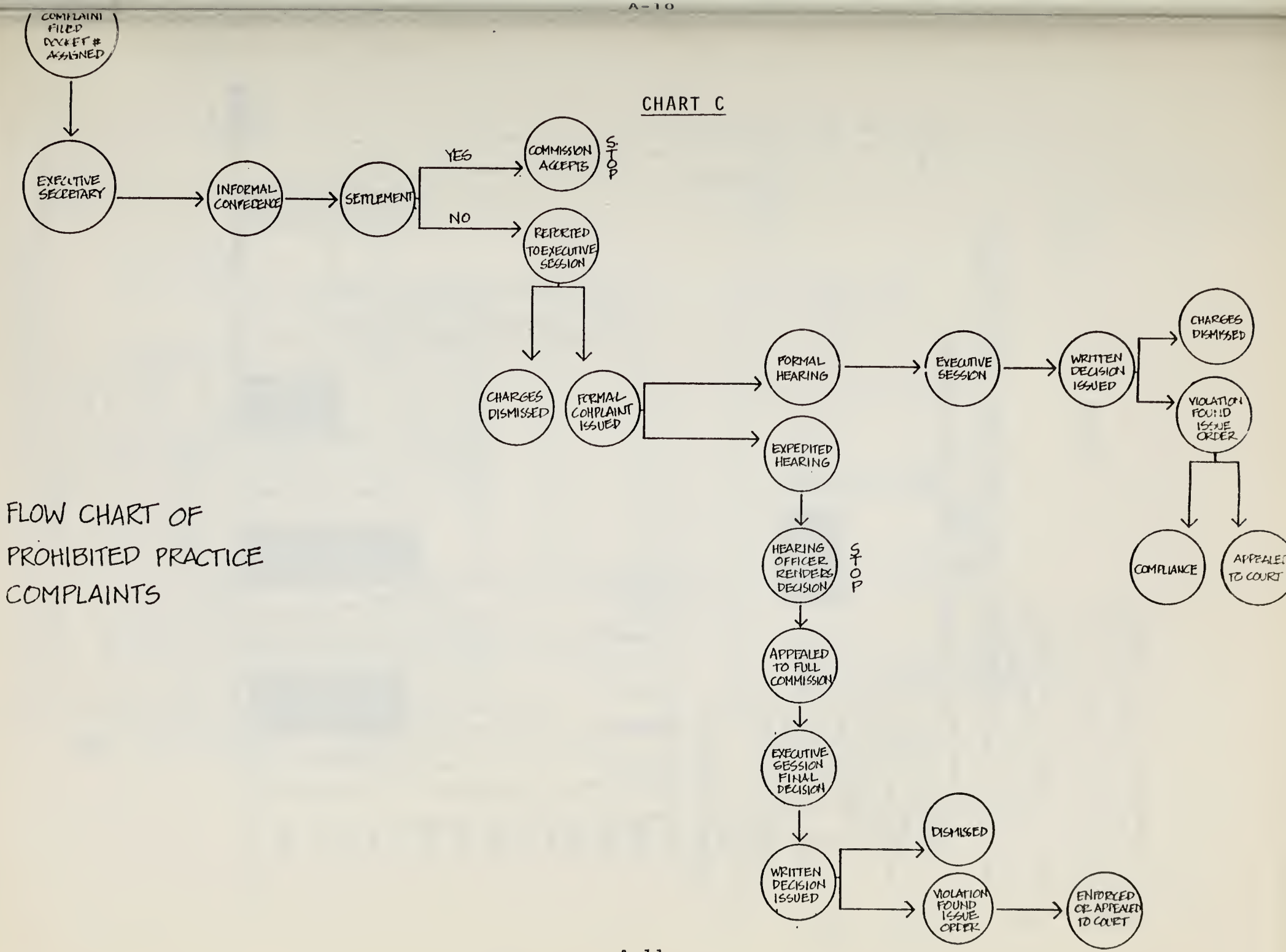


CHART C



FLOW CHART OF PROHIBITED PRACTICE COMPLAINTS

CHART D

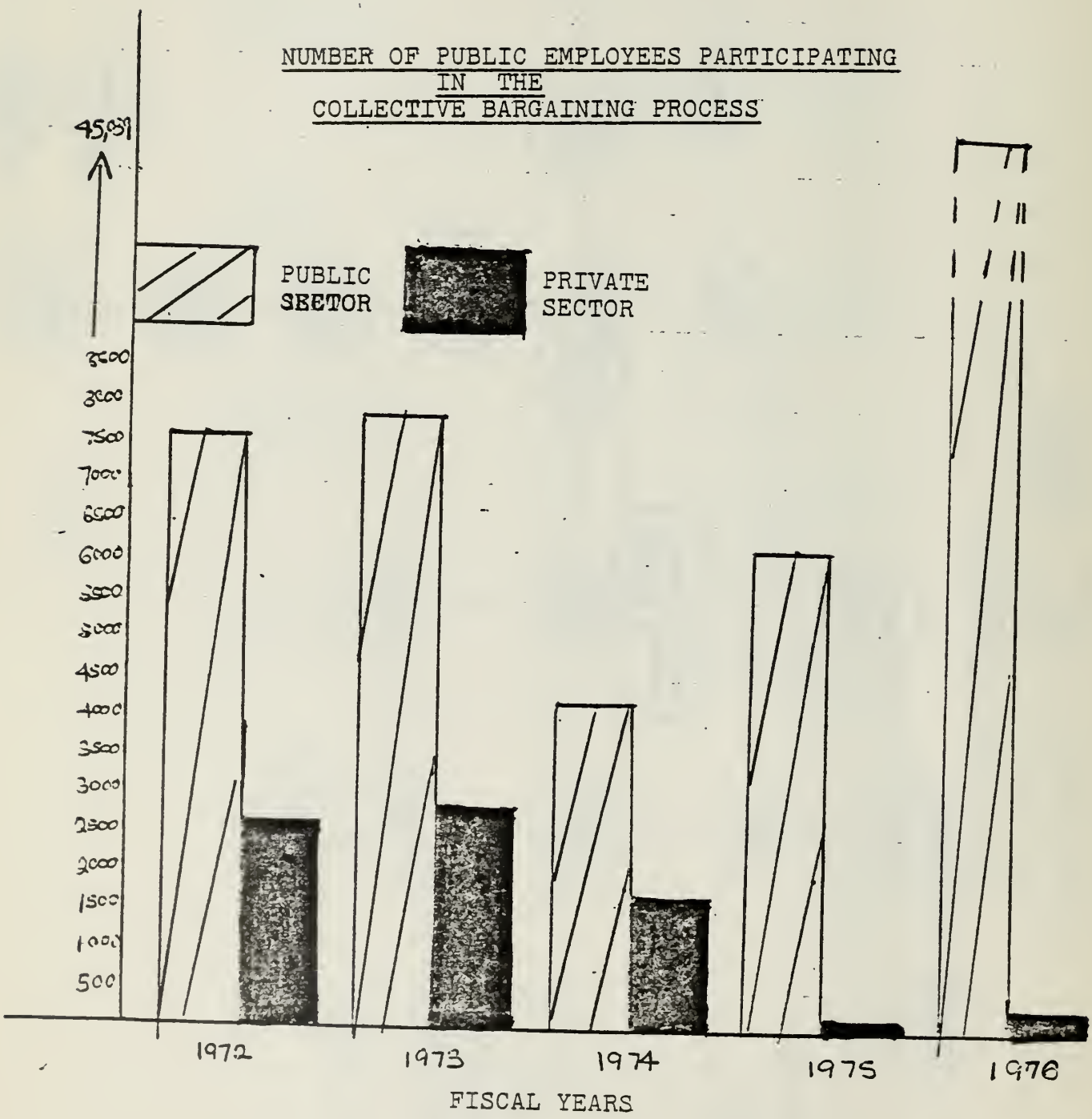

NUMBER OF PUBLIC EMPLOYEES PARTICIPATING
IN THE
COLLECTIVE BARGAINING PROCESS
45,851
PUBLIC SECTOR
PRIVATE SECTOR
3500
3000
2500
2000
1500
1000
500
1972
1973
1974
1975
1976
FISCAL YEARS

CHART E

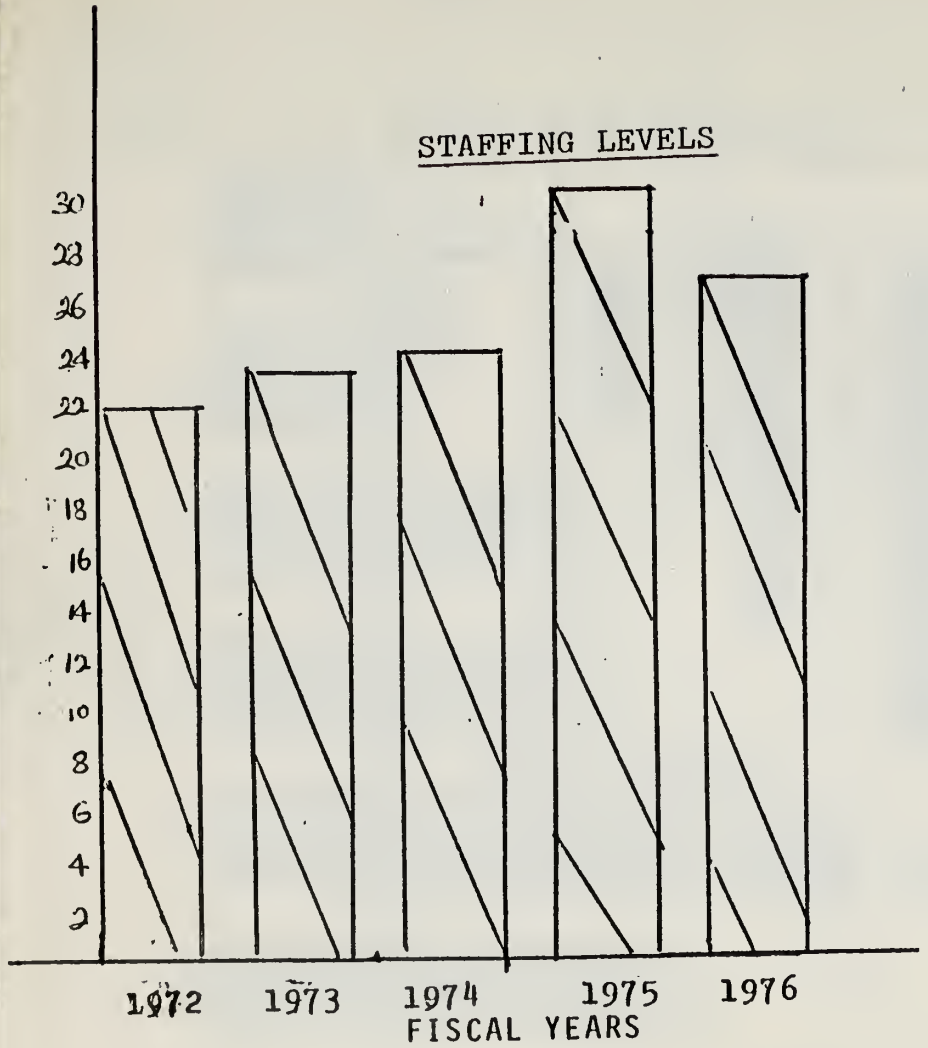


CHART F

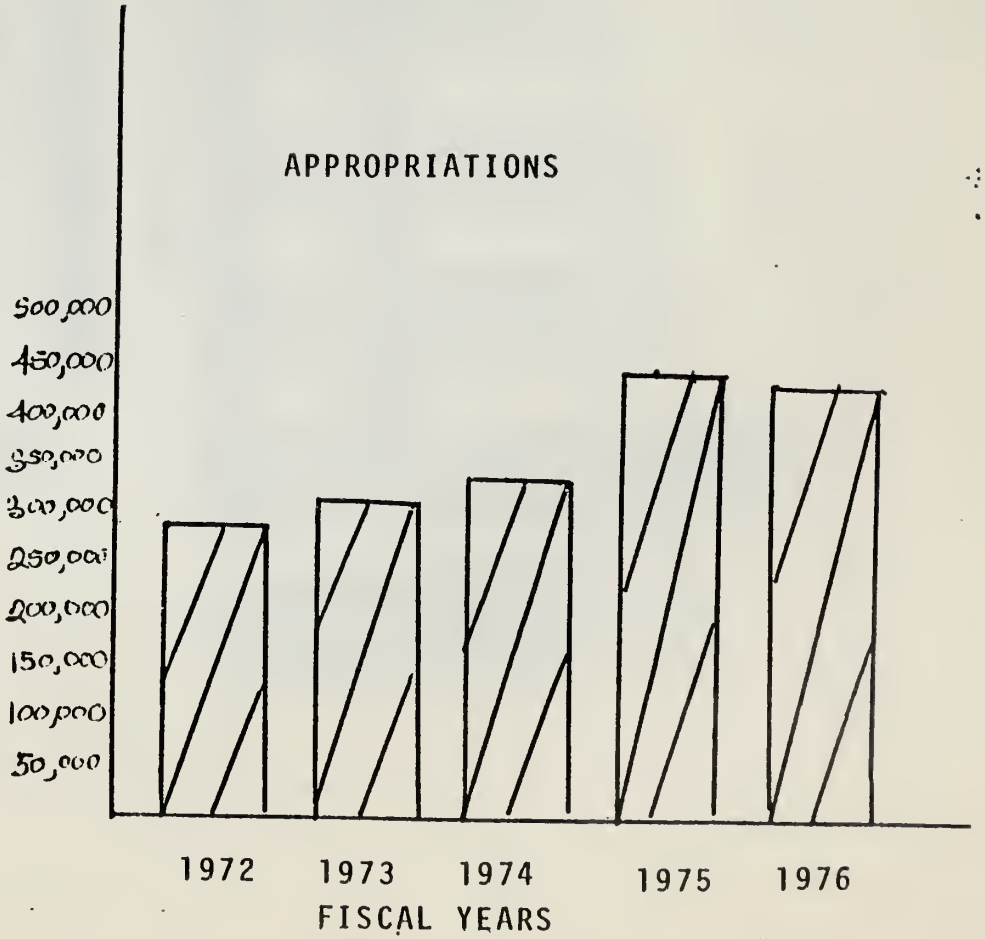


CHART G

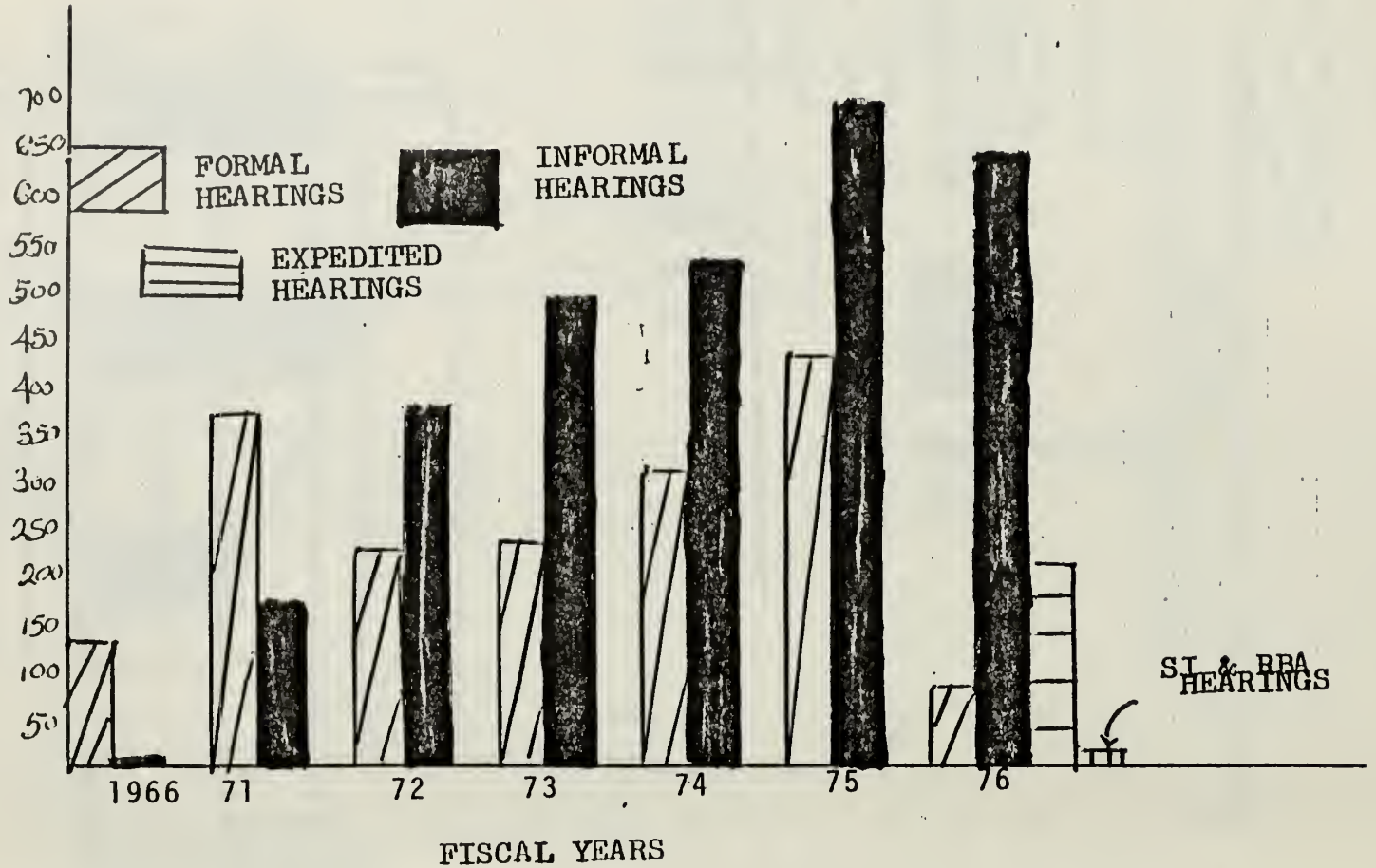

700
650
600
550
500
450
400
350
300
250
200
150
100
50
FORMAL HEARINGS
INFORMAL HEARINGS
EXPEDITED HEARINGS
SI & RRA HEARINGS
1966
71
72
73
74
75
76
FISCAL YEARS

CHART H

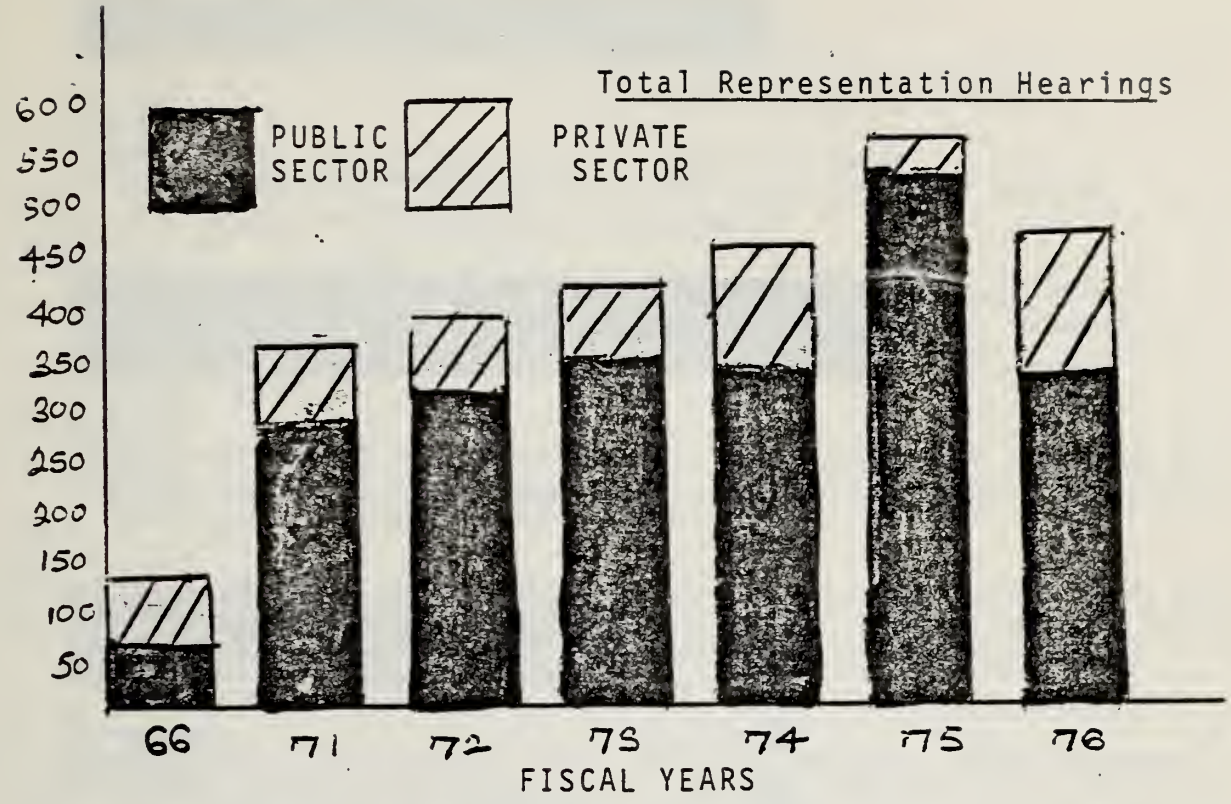


CHART I

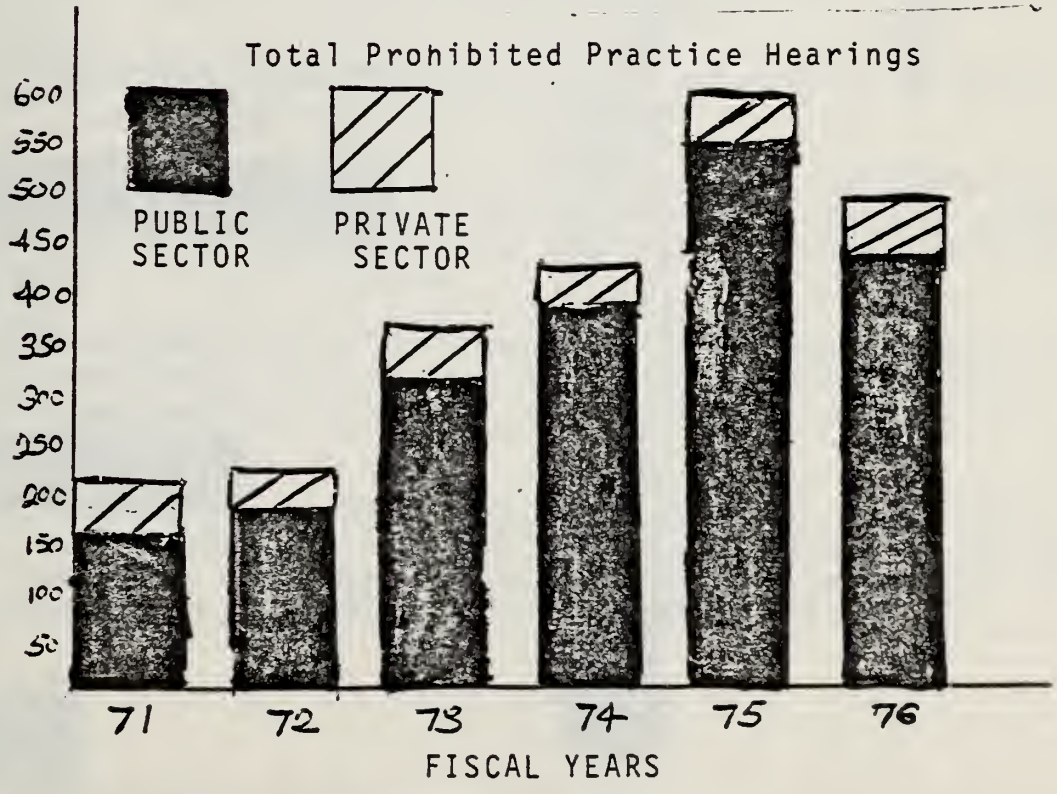


CHART J

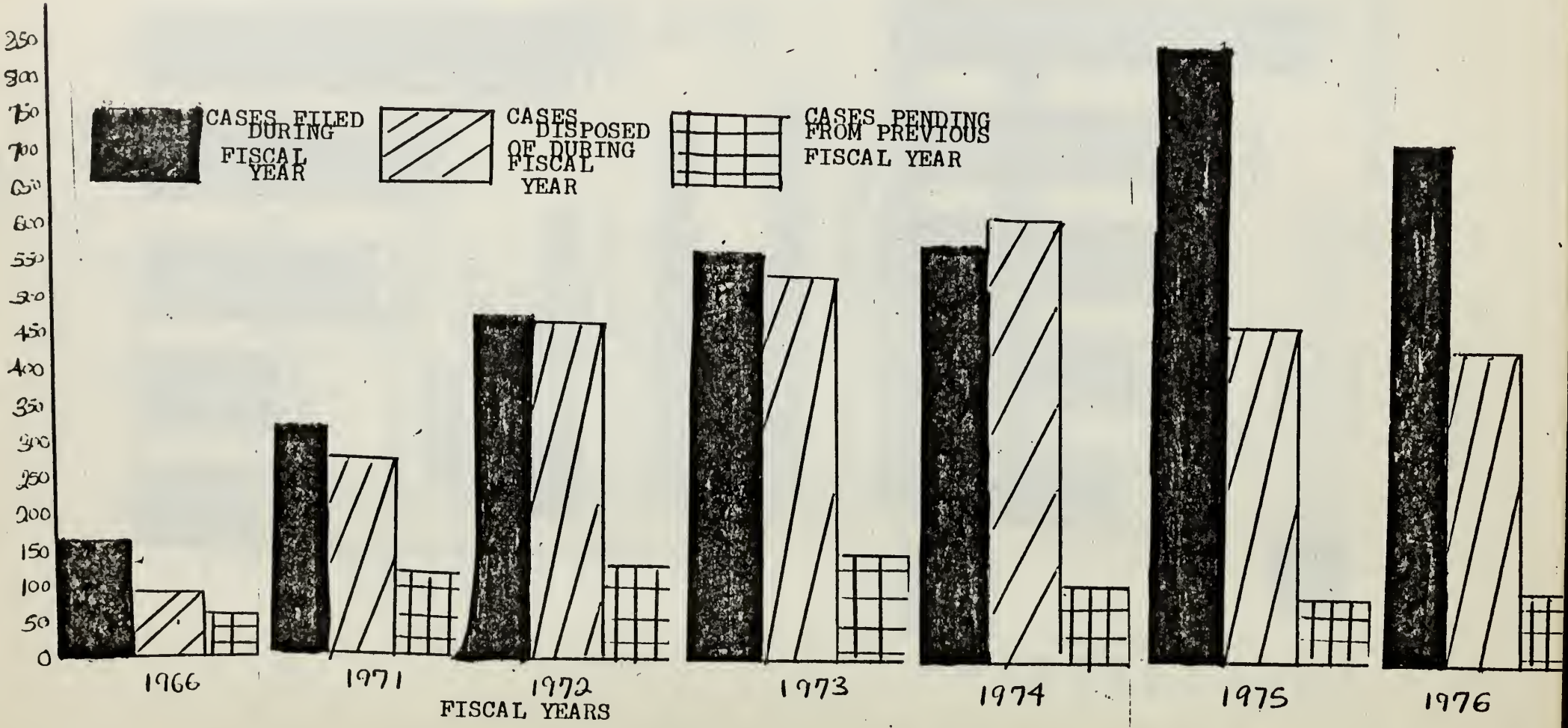

CASES FILED DURING FISCAL YEAR
CASES DISPOSED OF DURING FISCAL YEAR
CASES PENDING FROM PREVIOUS FISCAL YEAR
250
200
150
100
50
0
1966
1971
1972
1973
1974
1975
1976
FISCAL YEARS

EXHIBIT A

HOW DID PUBLIC EMPLOYEE BARGAINING EVOLVE?

1935 Wagner Act (National Labor Relations Act)
Gave collective bargaining rights to private sector employees in interstate commerce.

1937 Massachusetts passes Chapter 150A, "Baby Wagner Act," extending bargaining rights to private sector employees within the commonwealth; Labor Relations Commission established.

1958 All public employees (except police officers) granted the right to join unions and to "present propsoals" to public employers. Chapter 149, Section 178D.

1960 Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the matter and method of bargaining Chapter 40, Section 4C.

1964 State employees given the right to bargain with respect to working conditions (but not wages). Chapter 149, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations that bargaining took place.

1965 Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment. Chapter 149, Sections 178G-N. This repealed Chapter 40, Section 4C.

1969 Mendonca Commission established by legislature to revise public employee bargaining laws.

1973 All public employees--state and municipal--extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.

1974 Chapter 150E amended to strenghten enforcement powers of Labor Relations Commission; modify union unfair labor practices; modify standards for exclusion of managerial employees.

1975 MLRC issued standards for Appropriate Bargaining Units affecting fifty five thousand state employees in more than two thousand job classifications. Ten statewide units were created-five non-professional and five professional.

EXHIBIT B

UNIT DETERMINATION IN STATE EMPLOYEE BARGAINING

CHRONOLOGY OF EVENTS

July 1, 1974

Chapter 150E of the General Laws gives state employees the right to bargain for wages, hours, terms and conditions of employment and standards of productivity and performance. (State employees since 1966 have had the right to organize; bargaining powers, however, were limited to localized working conditions.)

Chapter 150E now designates the Commissioner of Administration as the bargaining agent for the employer, rather than the department or agency head.

September 25, 1974

Existing state employee bargaining units total 240. Nearly 40 additional petitions have been filed by various employee organizations seeking basically departmental or sub-departmental units.

The Office of Employee Relations, as the designee of the Commissioner of Administration, files two petitions with the Massachusetts Labor Relations Commission (MLRC) proposing the reorganization of state employee bargaining groups into two units: one of all non-professional workers and the second comprising all professionals.

November 11, 1974

A Decision and Order of the MLRC dismisses the employer's petitions as not "raising a question of representation," since no union sought to represent the suggested units. At the same time, the MLRC defers consideration of all pending petitions and recommends that standards for appropriate units be established through a rule-making procedure.

The MLRC suggests that state employees be grouped by occupation into 13 statewide units:

(continued)

November 11, 1974 (cont'd.)	1) administrative, investigative and clerical; 2) service, maintenance and institutional; 3) building trades and crafts; 4) public safety; 5) institutional security; 6) non-professional technical; 7) fiscal, research, statistical, analytical and staff services; 8) legal; 9) patient treatment; 10) patient care; 11) social services; 12) engineering and science, and 13) educational services. In addition, the MLRC schedules an informational hearing on November 27, 1974 to give all interested parties an opportunity to voice their opinions on the MLRC's use of its rule-making authority.
December 24, 1974	The MLRC proposes an amendment to its rules and regulations which would establish between six and 14 statewide bargaining units for state employees, modifying somewhat its November 11, 1974 proposal. A hearing is set for February 10, 1975 to consider the amendment.
February 10, 11, 1975	Public hearing is held on the proposed standards. The employer and many employee organizations attend and express their views. The hearing is concluded and interested parties are given 14 additional days to submit material for the record.
February 12-26, 1975	Approximately 20 organizations file post-hearing statements with the MLRC as provided in the Notice of Hearing.
March 3, 1975	The MLRC adopts amendments to its rules and regulations, setting standards which permit 10 statewide bargaining units--five non-professional and five professional. The non-professional units are: 1) clerical and administrative; 2) service, maintenance and institutional; 3) building trades and crafts; 4) institutional security, and 5) law enforcement. The professional units permitted are: 1) administrative; 2) health care; 3) social and rehabilitative; 4) engineering and science, and 5) education. The entire rulemaking proceeding was accomplished in less than 10 weeks. Accompanying the amendments and standards was almost 60

(continued)

March 3 Cont'd. pages of explanatory material, the result of long hours of staff work by the MLRC.

The next step is to deal with pending petitions before the MLRC. Those which vary substanially from the standards adopted will be dismissed. Those seeking a unit somewhat similar to those adopted by the MLRC will be processed, if amended to conform. Those petitons already in accordance with the standards will be immediately processed under the new rules.

As adopted, the 10 units place the MLRC squarely within the mainstream of current thinking on unit determination for state employees. Most states that allow wage bargaining by state employees established between five and 20 units. The major innovation by the MLRC was the adoption of the rulemaking procedure which permitted the unit-determination process to be completed within 10 weeks. In contrast, New York requred 18 months to achieve a similar result.

UNIT BY UNIT SUMMARY

Unit 1	SCR-2074 SCR-2076	Decision 10/14/75 Election 10/31 - 11/7, 1975 Certification 2/4/76
Unit 2	SCR-2061	Decision 10/24/75 Election 10/31 - 11/17, 1975 Certification 2/4/76
Unit 3	SCR-2062	Decision 10/6/75 Election 10/31 - 11/17, 1975 No Majority Run off election 1/30 - 2/17, 1976 Certification 3/29/76
Unit 4	SCR-110 SCR-118 SCR-2063	Decision 6/13/75 Election 10/31 - 11/17, 1975 Election result set aside 12/18/75 Re-run election 1/30 - 2/17, 1976 Challenges Resolved 4/7/76 Certification 4/20/76
Unit 5	SCR-2064	Decision (Hearing Officer) 12/22/75 Decision modified 1/23/76 Election 1/30 - 2/17, 1976 Ruling on Objection 7/30/76 Run-off election (date to be announced)

(cont'd)

Unit 5A	SCR-2090	Consent agreement 1/14/76 Election 1/30 - 2/17, 1976 Certification 3/3/76
Unit 6	SCR-2075 SCR-2077	Decision 10/14/75 Election 10/31 - 11/17, 1975 Challenges resolved 1/7/76 Certification 2/4/76
Unit 7	SCR-2072	Decision 10/10/75 Election 10/31 - 11/17, 1975 Certification 1/22/76
Unit 8	SCR-2067	Hearing held 5/20/75 and thereafter Decision 10/6/75 Election 10/31 - 11/17, 1975 Certification 2/4/76
Unit 9	SCR-2068	Decision 10/24/75 Election 10/31 - 11/17, 1975 Certification 1/19/76
Unit 10	SCR-2053	Decision 8/8/75 Election 10/31 - 11/17, 1975 No Majority Run-off election 1/30 - 2/17, 1976 Certification 3/3/76

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

(Present Structure) (as of June 30, 1976)

EXHIBIT C

COMMISSIONER
Henry C. Alarie
(97-928)
Position # 0014

CHAIRMAN
James S. Cooper
(97-[illegible])
Position # 0002

COMMISSIONER
Madelina D. Miceli
(97-928)
Position # 0015

EXECUTIVE SECRETARY
(25-627)
Position # 0003

LEGAL SECTION
Counsel II (22-633)
Position # 0001
Position #9003
Position # 9001
Position # 0017-in
lieu of Counsel III

HEARING STENOGRAPHERS
(13-703)
Position # 0005
Position # 0004

Position # 0024

INVESTIGATORY FORCE
Labor Relations Examiners
(18-841)
Position # 0021
Position # 0008
Position # 0013
Position # 0022
Position # 9000

ASSISTANT TO EXEC. SECRETARY
(16-)
Position # 0029

CLERICAL FORCE
Head Clerk
(11-543)
Position # 0016
Principal Clerk
(09-557)
Position # 0006
Senior Clerk and Stenographer
(07-555)
Position # 0025
Position # 0023
Position # 9005
Position # 9006
Senior Bookkeeper
(07-553)
Position # 9002
Senior Clerk and Typist
(06-530)
Position # 0028
Junior Clerk and Stenographer
(04-537)

July 1, 1973 to June 30, 1974

FINANCIAL STATEMENT - FY 1974 EXHIBIT D

Received from the General Appropriation		343,276.00	
TOTAL		343,276.00	
			343,276.00
Expenditures and Obligations			
Salaries	282,738.00		
Special Services	3,227.04		
Supplies	15,107.45		
Travel	3,350.04		
Other Services and Expenses	10,136.16		
Total	314,558.69		314,558.69
Returned to State Treasury			
Balance Unexpended	28,717.31		28,717.31
Turned Over to State Treasury			
Income From Sale of Stenographic Records and Decisions	8,567.00		8,567.00

July 1, 1974 to June 30, 1975

FINANCIAL STATEMENT (Estimated)

Received from the General Appropriation		$449,326.00	
TOTAL		$449,326.00	
			$449,326.00
Expenditures and Obligations			
Salaries	378,869.87		
Special Services	5,588.75		
Supplies	21,874.79		
Travel	8,000.00		
Other Services and Expenses	19,783.41		
Total	434,116.82		434,116.82
Returned to State Treasury			
Balance Unexpended	15,209.18		15,209.18
Turned Over to State Treasury			
Income from Sale of Stenographic Records and Decisions	8,479.00		8,479.00

July 1, 1975 - June 30, 1976

FINANCIAL STATEMENT-FY 1976

Received from the General Appropriation.....	$448,523.00	
TOTAL.....	$448,523.00	
		$448,523.00
Expenditures and Obligations		
Salaries	$331,852.75	
Special Services	29,701.89	
Supplies	39,171.00	
Travel	3,983.40	
Other Services & Expenses	8,768.57	
Total	$423,477.47	$423,477.47
Returned to State Treasury Balance Unexpended	$ 25,045.53	$ 25,045.53
Turned Over to State Treasury Income from Sale of Stenographic Records and Decisions	$ 9,000.00	$ 9,000.00

EXHIBIT E

JULY 1, 1973 TO JUNE 30, 1974

PERSONAL SERVICES

SALARIES AS OF JUNE 30, 1974

Henry C. Alarie	Member, Labor Relations Comm.	$21,000.00
Rita Alberti	Principal Clerk	9,302.80
Joellen Bogdasarian	Attorney	16,263.00
Alfonso M. D'Apuzzo	Executive Secretary	21,769.80
Shirley DeMarco	Senior Clerk & Stenographer	6,658.60
George M. Doyle	Labor Relations Examiner	16,543.80
Pearl Grunin	Senior Clerk & Stenographer	7,904.00
Linda Hayes	Senior Bookkeeper	6,936.80
Francis P. Hennessy	Labor Relations Examiner	16,543.80
Margaret M. Higgins	Hearings Stenographer	11,775.40
Alice Hintsa	Hearings Stenographer	11,775.40
Mary Lally	Labor Relations Examiner	16,543.80
Ralph Lyons	Hearings Stenographer	10,699.00
Alexander Macmillan	Chairman, Labor Relations Comm.	23,000.00
Eugene Markowitz	Research Analyst	10,228.40
John L. McLaughlin	Labor Relations Examiner	16,543.80
Madeline H. Miceli	Member, Labor Relations Comm.	21,000.00
Robert B. McCormack	Attorney	17,750.20
Kathleen O'Leary	Junior Clerk & Stenographer	6,154.20
Ezaura P. Palys	Senior Clerk & Typist	8,387.60
Korener K. Reid	Hearings Stenographer	9,981.40
Barry Wooters	Attorney	17,006.60
Doris Zitaner	Hearings Stenographer	10,340.20
Elinor Lipman*	Public Information Officer	10,228.40
Ste . Kahn	Attorney	17,006.60

Staff 24

Employed as a consultant (03) during June; became a full-time employee in FY 1975.

LABOR RELATIONS COMMISSION Salaries of Employees as of June 28, 1975

Henry C. Alarie	Member, Labor Relations Comm.	$21.000.00
Rita Alberti	Principal Clerk	9,302.80
Joellen Bogdasarian	Attorney	17,006.60
Patricia Ciampa	Jr. Clerk & Typist	6,154.20
Ann DaDalt	Asst. to Executive Secretary	11,570.00
Alfonso D'Apuzzo	Executive Secretary	21,769.80
Shirley DeMarco	Senior Clerk & Stenographer	6,936.80
George Doyle	deceased	
Pearl Grunin	Senior Clerk & Stenographer	8,145.80
Sandra Haigh	Senior Clerk & Typist	6,658.60
Linda Hayes	Head Clerk	8,785.40
Francis P. Hennessy	Labor Relations Examiner	16,543.80
Margaret M. Higgins	Hearings Stenographer	11,775.40
Alice Hintsa	Hearings Stenographer	11,775.40
Eileen Hoffman	Senior Employee Rel. Examiner	13,049.40
Steven C. Kahn	Attorney	17,750.20
Mary Lally	Labor Relations Examiner	16,543.80
Elinor Lipman	Public Information Officer	11,570.00
Ralph Lyons	Hearings Stenographer	11,057.80
Alexander Macmillan	Chairman, Labor Relations Comm.	23,000.00
Robert McCormack	Attorney	18,493.80
John McLaughlin	Labor Relations Examiner	16,543.80
Madeline Miceli	Member, Labor Relations Comm.	21,000.00
Kathryn Noonan	Labor Relations Examiner	13,049.40
Kathleen O'Leary	Senior Bookkeeper	6,936.80
Ezaura P. Palys	Senior Clerk & Typist	8,387.60
Norener K. Reid	Hearings Stenographer	9,981.40
Garry Wooters	Attorney	17,750.20
Doris Zitaner	Hearings Stenographer	10,699.00
Herve Gouraige	Senior Clerk & Stenographer	6,936.80

July 1, 1975 - June 30, 1976

PERSONAL SERVICES

SALARIES AS OF JUNE 30, 1976

Robert B. McCormack	Counsel II	$19,237.00
James S. Cooper	Chairman, Labor Relations Commission	$23,000.00
Alfonso M. D'Apuzzo	Executive Secretary	$21,769.00
Ralph Lyons	Hearings Stenographer	$12,334.40
Margaret M. Higgins	Hearings Stenographer	$12,755.60
Shirley DeMarco	Principal Clerk	$ 7,618.00
Ann DaDalt	Labor Relations Examiner	$13,049.40
John L. McLaughlin	~~Member~~, Labor Relations Commission Examiner	$16,543.80
Henry C. Alarie	Member, Labor Relations Commission	$21,000.00
Madeline H. Miceli	Member, Labor Relations Commission	$21,000.00
Arthur Weber	Head Clerk	$ 8,460.40
James Litton	Counsel II in Lieu of	$16,263.00
Frederick Casselman	Sr. Employee Relations Examiner in Lieu of Labor Relations Examiner	$13,049.40
Marry Lally	Labor Relations Examiner	$16,543.80
Ezaura P. Palys	Senior Clerk & Stenographer	$ 8,387.60
Alice Hintsa	Hearings Stenographer	$12,755.60
Pearl Grunin	Senior Clerk & Typist	$ 8,387.60
Patricia Ciampa	Junior Clerk & Typist	$ 6,154.20
Ourania Trypousis	Senior Clerk & Typist	$ 6,665.60
Deidre Thomas	Senior Clerk & Typist	$ 6,665.60
Jean Driscol	Asst. to Executive Secretary	$11,570.00
Harvey Shrage	Senior Employee Relations Examiner	$13,049.40
David Abel	Counsel II	$16,263.00
Karl Frieden	Senior Bookkeeper	$ 6,936.80
Kathryn Noonan	Counsel II	$16,263.00
Stuart Kaufman	Counsel II	$16,263.00
Jean Lewis	Senior Clerk & Stenographer	$ 6,936.00

EXHIBIT F

SUMMARY OF CHANGES UNDER THE NEW
PUBLIC EMPLOYEE BARGAINING LAW

(Chapter 150E of the General Laws)

Definitions

Section 1. The only major change from prior law is to provide specifically that managerial and confidential employees are excluded from coverage. Employees may be designated as "managerial" only if they assist to a substantial degree, in the formulation of policy, in collective bargaining or in the administration of a collective bargaining agreement, on behalf of the employer.

Rights of Employees

Section 2. The new law grants to state, county and municipal employees the right to bargain collectively through representatives of their own choosing with respect to wages, hours, and other terms and conditions of employment. Previously, state employees could not bargain with respect to wages or hours.

Bargaining Units

Section 3. The Labor Relations Commission is authorized to determine appropriate bargaining units, giving due regard to such criteria as community of interest, efficiency of operations, and safeguarding effective representation.

Although the section does not deny bargaining rights to supervisory employees, it does exclude managerial employees and confidential employees. (See definition of "employee.")

Recognition, Certification, Decertification

Section 4. The Commission, as under the prior law, is authorized to direct an election by secret ballot to determine the exclusive representative whenever:

1. One or more employee organizations claim to represent a substantial number of employees in an appropriate unit.

2. An employee organization petitions the Commission alleging that a substantial number of employees wish to be represented by the petitioner.

3. A substantial number of employees in a bargaining unit allege that the exclusive representative no longer represents a majority of the employees.

Rights and Responsibilities of the Exclusive Representative

Section 5. The exclusive representative is authorized to negotiate agreements covering all employees in a bargaining unit and must represent the interests of all such employees without discrimination. Individual employees may present grievances at any time to the employer.

Scope of Negotiations

Section 6. The employer and exclusive representative shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment. ("Standards of productivity and performance," as a mandatory subject of bargaining, is new).

Written Agreements, Implementation, Conflicts

Section 7. All collective bargaining agreements shall be reduced to writing, and executed by both parties. The Employer must file a copy of each agreement with the Commission.

A request for any funds necessary to implement the agreement shall be submitted by the employer to the appropriate legislative body within 30 days. If that body rejects the appropriation, the "cost items" are returned to the parties for further bargaining. (When the General Court is not in session, a request for necessary funds from that body is presented to the next session thereof).

If there is a conflict between the provisions of a collective bargaining agreement and certain enumerated statutes, ordinances, by-law or regulations, the terms of the agreement prevail. (This provision reverses the prior law which makes contract provisions subject to supersession by conflicting statutes, ordinances, or by-laws. Basically, the statutes, etc., involved, deal with what could be described as "working conditions" or are otherwise incompatible with the collective bargaining process.)

Procedure for Resolution of Grievances

Section 8. This section mandates binding arbitration of grievances, with an election of remedies by the individual, where applicable, between civil service or contract grievance machinery. (i.e., only "one bite at the apple.") In the absence of an appropriate contract grievance procedure, binding arbitration may be ordered by the Commission on the request of either party.

Resolution of Impasses in Contract Negotiation

Section 9. As under the prior law, mediation and fact finding services are provided through the Board of Conciliation. The fact finder's report is not binding, but is to be made public. New time limits within which the mediators and fact finders respectively must act, are established.

If the impasse persists after the publication of the fact finder's report, the issues in dispute are returned to the parties for further bargaining. The issues in dispute may be resolved by binding arbitration if both parties and the appropriate legislative body agree. In the case of school employees, the appropriate legislative body is the school committee. (Note outside Section 4 below with respect to police and firefighters.)

Strike Prohibition

Section 9A. Strikes by all public employees are prohibited, with the Labor Relations Commission empowered to investigate situations where strikes are occurring or are threatened, and "set requirements that must be complied with."

Prohibited Practices: Evidence of Bad Faith

Section 10. This section restates the prior law and adds, as a prohibited practice, when committed by the employer or employee organization, the following:

Refusal to participate in good faith in the mediation, fact finding and arbitration procedures set forth in Section 8 and 9.

Prevention of Prohibited Practices

Section 11. The Commission is authorized to investigate whenever it is alleged that a prohibited practice has been committed, issue an enforceable

cease and desist order against any party committing a prohibited practice, or take other affirmative action. (The Commission had this power under the prior municipal bargaining law, but was restricted to making non-binding "recommendations" under the prior law governing state employees.)

Service Fee

Section 12. A collective bargaining agreement ratified by the majority of employees in an appropriate unit may provide for the payment of a "service fee" i.e., a non-member of the employee organization who is represented thereby, must pay to the organization a fee proportionately commensurate with the cost of collective bargaining and contract administration. (Prior law provide for local acceptance and did not apply to state employees).

List of Employee Organization

Section 13. The Commission shall maintain a list of employee organizations which shall include the name and address of its officers, and affiliation of each organization and information relative to dates of certification and the expiration of any signed agreements. Copies of this list shall be made available to interested parties. (There was no such provision in the prior law.) The Commission is empowered to enforce this section and the following section.

Financial Reports

Section 14. Each employee organization is required to file a report containing certain basic information, including an annual report as to its receipts and disbursements, which report shall also be made available to employees in each bargaining unit represented by such organizations. (There was no such provision in the prior law.)

Penalties

Section 15. Provides fines for willful interference with official administration of the law.

Provides fines for filing false financial reports.

Provides that no compensation shall be paid to any employee for a period during which he is on strike, or for such time as such employee is later compelled to work to fulfill the provisions of a collective bargaining agreement.

Employees engaging in a strike are subject to disciplinary and discharge procedures.

Section 4 of Chapter 1078 of the Acts of 1973

If a contract impasse involving municipal firefighters or police officers persists 30 days after the publication of the fact finders report, and proceedings for the prevention of prohibited practice have been exhausted, a three-member arbitration panel is chosen by the parties, under the supervision of the Board of Conciliation. The panel holds hearings on the issues in dispute, and, at the conclusion of the hearing, each party submits a written statement containing its "last and best off" for each of the issues in dispute. The panel must accept one statement or the other as being most reasonable - and the decision of the panel is binding on the parties and on the appropriate legislative body.

Section 5 of Chapter 1078

Provides a "grandfather clause" for contracts in force prior to July 1, 1974.

Section 6 of Chapter 1078

A severability clause, in the event that any provision of the new law is found to be unconstitutional.

Section 7 of Chapter 1078

Makes the new law effective on July 1, 1974.

Section 8 of Chapter 1078

Provides that Section 4 (firefighter and police arbitration) will expire on June 30, 1977.

EXHIBIT G

STATUTORY AMENDMENTS

Below is the full text of Chapter 591 of the Acts of 1975, passed over the Governor's veto by the House on August 6, 1975 and by the Senate on September 6, 1975. It carves out a separate state employee unit for state police officers. In addition, Section 11 of Chapter 689 of the Acts of 1975 is printed in full. Chapter 689, which exempted employees in the departments of the state secretary, state treasurer, state auditor and attorney general from coverage under Chapter 150E, became effective as Emergency legislation on November 12, 1975.

Chapter 591 of the Acts of 1975

RELATIVE TO THE COLLECTIVE BARGAINING UNIT OF THE UNIFORMED BRANCH OF THE DIVISION OF STATE POLICE.

Be it enacted by the Senate and House of Representatives in General Court assembeld, and by the authority of the same, as follows:

Section 3 of chapter 150E of the General Laws, as appearing in section 2 of chapter 1078 of the acts of 1973, is hereby amended by adding the following paragraph:--

The appropriate bargaining unit in the case of the uniformed branch of the division of state police for officers subordinate to the rank of lieutenant shall be composed of members of the state police holding and in the rank of staff sergeant, sergeant, corporal, policewoman and trooper.

Chapter 689 of the Acts of 1975

Section 11. The first sentence of the definition of "Employee" or "public employee" in section 1 of chapter 150E of the General Laws, as appearing in section 2 of chapter 1078 of the acts of 1973, is hereby amended by inserting after the word "commission", in lines 7 and 8, the words;-- , and officers and employees within the departments of the state secretary, state treasurer, state auditor and attorney general.

EXHIBIT H

ARTICLE IX

REQUIREMENTS UNDER SECTION 12
OF THE LAW PROVIDING FOR SERVICE FEES

Section 1

Purpose and Scope

The purpose of this Article is to implement the provisions of Section 12 of Chapter 150E of the General Laws. The scope of this Article shall be applicable only to proceedings arising under Section 12 of Chapter 150E of the General Laws.

Section 2

Definitions

(a) The term "service fee" as used herein shall mean a sum of money which an employee is required as a condition of employment to pay to a bargaining agent pursuant to a collective bargaining agreement as provided in Section 12 of the Law.

(b) The term "bargaining unit" as used herein shall mean that group of employees represented by a bargaining agent which has been recognized by the employer or certified or designated by the Commission pursuant to the Law and the Rules and Regulations of the Commission.

(c) The term "bargaining agent" as used herein shall mean the employee organization recognized by the employer or certified or designated by the Commission as the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining.

(d) The term "collective bargaining agreement" as used herein shall mean a written agreement between a public employer and a bargaining agent which sets forth wages, hours or other terms and conditions of employment for employees in a bargaining unit.

Section 3

Elements of a Service Fee

(a) Any service fee imposed in compliance with the provisions of this Article shall be presumed valid by the Commission.

(b) The service fee shall be proportionately commensurate with the costs of collective bargaining and contract administration.

(c) The service fee imposed upon employees in a bargaining unit shall be uniform.

(d) Costs not related to collective bargaining and contract administration include:

i. Contributions to political parties or candidates for or holders of public office;

ii. Contributions to charitable, religious or political organizations or causes;

iii. Fines, penalties or damages arising from the unlawful activities of a bargaining agent or a bargaining agent's officers or agents or members;

iv. Costs of social or recreational activities;

v. Costs of educational actiyities unrelated to collective bargaining and contract administration;

vi. Costs of medical insurance, retirement benefits or other benefit programs;

vii. Costs incurred by the bargaining agent to organize employees who are not included in the bargaining unit;

viii. Other costs unrelated to collective bargaining and contract administration.

Section 4

Procedure for Ratification

(a) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees in the bargaining unit present and voting.

(b) The ratification vote shall be taken at a meeting or meetings called by the bargaining agent to be held at a reasonable time and place. Such meeting or meetings shall be open to all employees in the bargaining unit covered by the proposed collective bargaining agreement.

(c) All and only employees within the bargaining unit shall be eligible to vote. The vote shall be publicly counted and the majority of those present and voting shall prevail. If the collective bargaining agreement is ratified, the bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.

(d) The bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by Section 14 of the Law.

(e) Notice of the ratification meeting shall be given by the bargaining agent at least 5 calendar days prior to the holding of the meeting, unless extraordinary circumstances warrant notice of less than 5 days. The notice shall include the following information: the time and place of the meeting or meetings; that the proposed collective bargaining agreement, if ratified, will require payment of a service fee as a condition of employment; the amount of the service fee; that the meeting is open to all employees within the bargaining unit regardless of membership in the bargaining agent's organization; that all employees within the bargaining unit covered by the proposed agreement are eligible to vote; that the bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous fiscal year is available for inspection.

(f) The bargaining agent shall give notice of the ratification meeting in like manner to all employees in the bargaining unit. Such notice shall include posting of a notice in compliance with paragraph (e) in a manner reasonably calculated to give notice to all employees within the bargaining unit.

Section 5

Non-payment of Service Fee

(a) If an employee, after demand by the bargaining agent, refuses to pay the service fee in accordance with the requirements of a collective bargaining agreement, the bargaining agent may request the employee's termination. The employer, after reasonable notice to the employee, shall terminate the employee pursuant to the collective bargaining agreement; provided, however, that no employee shall be terminated who has tendered the required service fee prior to termination; and provided further, that payment of a service fee shall not be required before the thirtieth day following the beginning of the employee's employment or the effective date of the collective bargaining agreement, whichever is later.

(b) An employee shall have the right to contest the decision to terminate his employment by filing a grievance in accordance with the collective bargaining agreement and/or by filing appropriate charges before the Commission. During the pendency of the employee's grievance under the collective bargaining agreement or charge before the Commission, the employee shall be permitted to continue his or her employment if the employee pays the contested service fee to an escrow fund administered by the bargaining agent or offers to make other appropriate arrangements for payment of the service fee to the bargaining agent. An employee who refuses to pay the service fee to an escrow fund or to make other appropriate arrangements for payment of the service fee to the bargaining agent and who is terminated will be denied a back pay award by the Commission if the Commission finds the service fee

EXHIBIT I

I. Additions to Article 1 -- Definitions.

(A) The following sentence is hereby added to Article I, Section 2: The term "an appropriate bargaining unit" shall be determined by the criteria set forth in Section 3 of the Law.

(B) The following Sections are hereby added to Article I:

SECTION 5. The term "recognition" means acceptance by an employer or public employer, pursuant to Article II, Section 5, subsection 2 of these Rules and Regulations, of an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

SECTION 6. The term "showing of interest" means a designated percentage of public employees in an allegedly appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive bargaining representative or have signed a petition seeking decertification of an incumbent employee organization.

Such designations shall consist of authorization cards or petitions, signed and dated by employees, authorizing the named employee organization to represent such employees for the purpose of collective bargaining; current dues deductions authorized pursuant to Sections 17A and 17C of Chapter 180 of the General Laws; or other evidence approved by the Commission.

II. Addition to Article II -- Proceedings under Section 4 of the Law.

(A) Article II, Section 5 is hereby amended by striking subsection 2 thereof in its entirety, and substituting therefor the following new subsection:

2. Except for good cause shown, no election shall be directed by the Commission pursuant to Section 4 of the Law, in any bargaining unit or any subdivision thereof for which the results of a valid election have been certified, or with respect to which recognition of an employee organization has been extended in accordance with the provision of this subsection, in the preceding twelve-month period.

For the purposes of this subsection, recognition shall not be extended to an employee organization unless:

(a) The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit, and

(b) The employer or public employer has conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least twenty (20) consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization in a specified bargaining unit.

(B) The following sentence is hereby added to Article II, Section 6 after the second sentence of the second paragraph:

However, no intervening employee organization, including such a duly recognized or certified bargaining representative, shall be permitted to appear on the ballot or be deemed a necessary party to a consent election agreement except upon a showing of interest of at least ten (10) per cent of the employees in the units found to be appropriate.

III. Amendment and Addition to Article III -- Procedure Under Section 11 of the Law for the Prevention of Prohibited Practices.

(A) Article III, Section 2 is hereby amended by adding the following sentence:

No complaint shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of a complaint with the Commission unless the person aggrieved did not have actual knowledge of the prohibited practice or was prevented from filing a complaint by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his acquisition of knowledge or discharge from the armed forces, respectively.

(B) Article III, Section 8 is hereby amended by deleting "have the right to" after "shall" in line one.

ANNUAL REPORT

1977

Massachusetts Labor Relations Commission

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
1604 LEVERETT SALTONSTALL BUILDING
100 CAMBRIDGE STREET, BOSTON 02202

Michael S. Dukakis
Governor

James S. Cooper
Chairman
Garry J. Wooters
Commissioner
Joan G. Dolan
Commissioner

August 22, 1977

TO:

The Honorable Paul Guzzi
Secretary to the Commonwealth
Boston, Massachusetts

Sir:

We are pleased to submit to you the report of the Massachusetts Labor Relations Commission for fiscal year ending June 30, 1977, in compliance with the provisions of Section 32 of Chapter 30 of the General Laws, and Section 9-0(c) of Chapter 23 of the General Laws, as amended.

LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman

GARRY J. WOOTERS, Commissioner

JOAN G. DOLAN, Commissioner

Publication Number: 9906-57-200-8-77-CR
Approved by Alfred C. Holland, State Purchasing Agent

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APPENDIX

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Tables

I. THE PURPOSE OF THE ANNUAL REPORT

The Labor Relations Commission (the Commission) administers the Public Employee Bargaining Law, Chapter 150E, and the "Baby Wagner Act," Chapter 150A of the General Laws. These laws give employees of state and local government, and employees of private businesses which conduct only intra-state transactions, the right to organize and bargain collectively with their employers.

The Commission conducts elections for collective bargaining representatives, and certifies the results; holds hearings and issues decisions on unfair, or prohibited, labor practice charges; investigates strikes; and considers requests for binding arbitration.

Although the Commission has been in existence since 1937 to administer Chapter 150A, its jurisdiction was greatly expanded in 1964, 1975, and 1973, when the legislature granted collective bargaining rights to municipal, county and state employees respectively. (See Table 1: "How Did Public Employee Bargaining Evolve?")

The purpose of this report is: to explain how the Commission functions; to report important decisions issued this year; and to provide information concerning the agency's workload and productivity.

II. MAJOR ACCOMPLISHMENTS OF THE YEAR

1. Decisions and Orders

Among the important decisions issued this year were two that clarified certain "scope of bargaining" issues. In a case concerning the Boston Teachers Union, the Commission found a residency requirement to be a "mandatory subject of bargaining," or, a subject over which the employer and employee organization have an obligation to bargain. In a case concerning the Town of Danvers and its firefighters, the Commission found "minimum manning," the number of firefighters assigned to a shift, to be a "permissive subject of bargaining," a subject which need not be bargained over unless both sides agree to do so.

When public works employees in Arlington, Walpole and Winchester refused to perform emergency snow removal duties, the Commission determined that emergency overtime cannot be refused when the public safety is at stake. No emergency overtime has since been refused.

2. New Representation Petition Procedures

New procedures for handling representation petitions have reduced the time from the day a petition is filed, to the day an election is held by one half.

3. Major Elections

The University of Massachusetts faculty and staff, and three units of state employees, a total of ten thousand voters, elected collective bargaining representatives in two of the largest elections in Commission history. It was necessary to utilize the entire Commission staff, including attorneys and secretarial staff, to conduct these elections, because of the large number of eligible voters.

4. Increased Productivity

The number of decisions issued and the number of cases disposed of this year have both increased 28 percent. This indicates that the productivity of the Commission has increased, and that cases are being disposed of more rapidly.

III. STRUCTURE OF THE COMMISSION

The Commission is composed of three members, appointed by the Governor, who serve five year terms. One commissioner is designated to act as Chairman. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law.

The Executive Secretary supervises employees under the direction of the Commission; prepares agendas for executive session; keeps the Commission informed of all matters pending; and maintains a permanent record of the disposition of any matter discussed and/or voted upon at the executive session. There is also an assistant executive secretary.

A staff of attorneys act as agents of the Commission to: prosecute any inquiry necessary to the performance of its functions; appear for and represent the Commission in any case in court; and to conduct hearings.

Labor Relations Examiners also act as Commission agents to conduct investigations and elections.

The head clerk attends to bookkeeping and administrative matters. Stenographers report formal hearings. Secretaries type decisions, prepare election material, send out notices and perform other clerical and administrative tasks. (See Table 2.)

1. Commissioners and Executive Secretary

In July of 1977, the Commission will have a full complement of three members for the first time in almost a year.

James S. Cooper has served as Chairman since October 1975. Previously, he was an attorney for the Boston law firm of Holtz and Drachman, the Massachusetts Commission Against Discrimination, and the New Jersey Division of Civil Rights. He is a graduate of Rutgers University Law School, where he served as a clinical instructor the year following his graduation.

Garry J. Wooters was appointed to the Commission in November 1976, to replace Henry C. Alarie, who retired last summer. Commissioner Wooters had previously served as counsel to the Commission, as a field attorney for the National Labor Relations Board, and as counsel to the National Association of Government Employees. He is a graduate of Boston University Law School.

Joan G. Dolan was appointed as a Commissioner on July 18, 1977. She replaced Madeline H. Miceli, who retired in January. Dolan was previously an attorney for the Massachusetts Teachers Association, and is a graduate of Northeastern University Law School.

Ann Da Dalt assumed her duties as Executive Secretary when Alfonzo D'Apuzzo retired in March. She had previously served as Assistant Executive Secretary. She was the first woman to receive a Masters in Labor Studies from the University of Massachusetts Labor Relations and Research Center in 1971. She also served as the labor education specialist for the School District of Phildelphia.

2. The Staff

Rita Alberti, secretary, has returned to the Commission, where she previously worked for over 20 years, after a year at the Department of Elder Affairs...Frederick V. "Fritz" Casselman, a graduate of Boston University Law School, has been with the Commission for almost two years ...Patty A. Ciampa has been the Commission's receptionist for three years. She is a graduate of Julie Billiard High School in East Boston, and Burdett College...Mary DiBlasio, secretary, recently joined the Commission after working for a temporary agency for a year...Philip J. Dunn came to the Commission last September from Gregory, Van Lopik and Higle, a labor law firm in Michigan, and is a graduate of Northeastern University Law School. He holds the esteemed position of office softball coach...Sharon Henderson Ellis, a graduate of Suffolk University Law School, also joined the Commission last September. Prior to law school, she served in the Peace Corps in Tunisia...David F. Grunebaum came to the Commission last September after receiving a Masters in Labor Law from New York University. He was previously in private law practice in Boston, and served as a Vista volunteer. He is a graduate of Boston University Law School...Alice T. Hintsa, hearings stenographer, first came to the Commission in 1956. She took time off in between, however, to teach evenings at the Stenotype Institute, to do some freelance reporting, and to have a baby...Stuart A. Kaufman came to the Commission in March 1976, after serving as legal counsel to the legislature's Committee on Public Service. He is a graduate of Boston College Law School, and directs a community band in Brookline...Mary J. Lally, labor relations examiner, has been at the Commission for 16 years. She is a member of the Democratic State Committee, and is active in community politics...Jeanie Lewis, secretary, came to the Commission a year ago from Water Pollution Control. A graduate of the Academy Moderne Modeling and Finishing School, she is expecting her first child in November...James M. Litton is a graduate of New York University Law School. He was counsel to the International Ladies Garment Workers Union in New York before coming to the Commission a year ago...Ralph

Lyons, hearing stenographer, came to the Commission seven years ago after a 14 year career in the railroad industry. He now teaches two nights a week at Touch Shorthand Academy, and has a black belt in judo...Robert B. McCormack, a graduate of Boston University Law School, has been at the Commission since 1972. Prior to that, he was defense counsel for the AMICA Insurance Company, and was in private practice in Hingham...John L. McLaughlin, labor relations examiner, has been with the Commission 11 years. A graduate of Boston College, he was previously with the National Labor Relations Board...Ezaura P. "Dee" Palys, secretary, came to the Commission eight years ago after working in Corporations and Taxation. She lives in Stoughton and has a son who will be a senior at MIT...Joan Quinlan, public information officer, has been with the Commission since September. She graduated from Boston College last year, and spent the intervening summer as an intern for the Patriot Ledger in Quincy...Norener Reid, hearing stenographer, returned to the Commission this year after a short break. She is a graduate of Boston Business School, and Touch Shorthand Academy. She conducts her church choir, and is a member of a community choir... Harvey M. Shrage, assistant executive secretary, graduated from Cornell University's School of Industrial and Labor Relations in 1975. He was the managing editor of the Massachusetts Labor Relations Reporter, and will attend Northeastern University Law School in September...Ourania "Nea" Trypousis, secretary, is a student at Suffolk University, majoring in business education. She works part-time at the Commission between her studies...Arthur S. Weber, head clerk, is a retired senior examiner with the Postal Inspection Service. He has worked for the Town of Braintree, the First National Bank, and the State Police since his retirement...Karen L. Zweig graduated from Northeastern University Law School last year. Prior to attending law school, she prepared multi-media job training materials, and taught elementary school.

IV. CASELOAD AND PRODUCTIVITY

The following is a detailed description of how the Commission performs its four basic functions.

1. Representation Cases

When employees or a union file a petition requesting the Commission to conduct an election for a collective bargaining representative, the Commission must determine the appropriate bargaining unit. This requires a finding as to which employees share a "community of interest" at the bargaining table. Sometimes the employer and the union consent to an appropriate unit, and the Commission approves it. But if they cannot agree, or if they propose an inappropriate unit, the Commission conducts hearings to make a determination. After the unit is defined, the Commission conducts a secret ballot election, and certifies the results. (See chart 3.) A special subset of representation petitions is "clarification petitions," filed by the employee organization or the employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

2. Unfair Labor Practices

There are employment practices prohibited under Chapter 150E

§ 10(a) and (b), and Chapter 150A § 4(a) and (b), which the employer and the employee organization are prohibited from performing. If the employer, or employee organization believes that an employee, employer or employee organization has performed a prohibited practice, they can file an unfair labor practice charge (prohibited practice charge) with the Commission (Chart 4, step A). The Commission conducts an informal conference when such a charge is filed, (step B), at which a Commission agent obtains statements from both parties and attempts to bring about a settlement (step C). The agent reports the results of the conference to the Commission (step D). If a settlement is not reached and the Commission finds that there is sufficient evidence to the charge to warrant a hearing, a complaint is issued (step E), and a formal (step F) or expedited (step G) hearing is held. A hearing officer or Commissioner presides at the hearings. During the hearings, witnesses are called and evidence is introduced. After an expedited hearing, the hearing officer issues a decision (step H), which is appealable to the full Commission (step I). Subsequent to a formal hearing, the Commission issues a decision (step J), which is appealable only to the courts (step K).

3. Strikes

Under Chapter 150E, public employees are prohibited from striking. Thus, when employees engage in or threaten to engage in a strike, the employer may petition the Commission to investigate. The Commission requires that representatives of the employer and employee organization appear for a formal investigation. The Commission "sets requirements that must be complied with." Such an investigation is given highest priority at the Commission.

4. Request for Binding Arbitration

If an employer and an employee organization enter a written contract which does not provide a grievance clause culminating in final and binding arbitration, to be invoked in the event of any dispute concerning the interpretation or application of such written agreement, the Commission may order such arbitration upon the request of either party.

A. Caseload

Between 1966 and 1973, the Commission's caseload grew over 300 percent; since the passage of Chapter 150E in 1973, when state employees were granted collective bargaining rights, the caseload has grown an additional 20 percent.

Table 1 indicates these increases. Table 2 shows the total filings of different types of cases during fiscal year 1977 and 1976. The Commission's case code is explained in the table. One noticeable trend is the rise in unfair labor practice charges filed by the municipal employer against municipal employees. 78 MUPL's were filed this year, compared to 48 last year.

Table 3 indicates that the Commission conducted 173 elections this year. This number does not reflect the size of the elections, however, two of which required the entire staff for over two weeks.

The total number of hearings held, including formal, informal, expedited and other (strike investigations, hearing on challenged ballots, etc.) has increased from 973 in 1976, to 1,091 in 1977, or 11%. The number of expedited hearings has increased from 208 in 1976, to 293 in 1977, or 29% (See Table 4.). The increase in formal hearings represents a large increase in the time stenographers spend reporting hearings and producing transcripts. The increase in expedited hearings, at which testimony is tape recorded, demonstrates how frequently employed and how necessary tape recording equipment is.

Table 5 details the number of strike investigations filed in 1977, the number of actual work stoppages, and the Commission's role in settling the disputes. Although there were 20 strike investigations, the Commission has prevented actual work stoppages in all but eight instances. The following testimony, presented by Chairman Cooper before the Public Service Committee of the General Court, explains the Commission's role during strike investigations:

> "The Commission's focus on strikes has been to get the underlying dispute settled as quickly as possible. We do not view our role as being merely a club to be used by employers to get their employees back to work. We will <u>always</u> order employees back to their jobs; but, we will also look further into the causes of the strike and attempt to get the parties back together and resolve the problem... Of the 47 strike petitions, we have settled either at our offices or after an Order, 31 cases. This represents approximately 65 percent of all the petitions filed. We are proud of this work."
>
> "We regard our role in the Superior Court to be somewhat different than acting as the agent of the employer. The Commission appears before the Court seeking enforcement of its Order. We attempt to guide the Court in deciding what action should be taken. We do not 'represent' the employer, we represent the Commission in serving in the public interest. Thus we define our role as being an aid to the Court in bringing an end to the dispute. We seek to represent a neutral position before the Court, but we always seek to have the Court enjoin the work stoppage."

B. Productivity

The productivity of the Commission staff has increased dramatically this year. The total number of decisions issued has increased from 110 in 1976, to 152 in 1977, or 28%; and the total number of cases disposed of has increased from 447 last year, to 615 this year, a 28% increase.(See Table 6.)

Although 476 cases remain open, all are in process at the Commission. As table 7 indicates, 128, or 27%, have been investigated, are on appeal to the full Commission, or are scheduled for an election. All others have been scheduled for a hearing or investigation.

The best way to illustrate each attorney's workload is to multiply the number of hours spent on an average case, 50 (table 8), by the total number of cases which reached decision, 152. (152 x 50 = 7,600 person hours) 7,600 person hours is over 50% of available attorney time (8 attorneys x 35 hours per week x 50 weeks = 14,000). Immeasurable amounts of time were also spent in disposing of an additional 463 cases by dismissal, settlement or some other means; on court cases; officer of the day work; executive sessions; and other duties. In order to perform all of these duties, attorneys are working well in excess of a regular work week.

V. COURT APPEARANCES

Parties to Commission decisions have the right under Chapter 30A §14 to appeal those decisions within 30 days to the Superior Court. Less than 8% of Commission decisions are appealed, and the majority of those are affirmed by the Courts. Yet, court cases consume a considerable amount of Commission time. Writing a brief can take a week, as can researching a case. Time in court takes anywhere from a few hours to a week; and at least another day can be spent preparing oral argument and attending to miscellaneous details. Although all staff attorneys handle court cases, one attorney spends at least 50% of his time coordinating and supervising court work. 49 cases involving the Commission are now pending before the courts.

VI. ADDITIONAL FUNCTIONS

1. Public Information and Community Relations

The Commission believes that an informed and educated public contributes to the maintenance of stable labor relations. The more knowledgeable employees and employers are of the law, the better they will be able to abide by it, and take advantage of their rights under it. The Commission therefore makes every effort to provide information to the public and to meet with groups of employers and employees.

A public information officer was hired this year to write press releases and answer questions of the media and the general public.

Each day an attorney or examiner is assigned to aide the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve such problems, the "officer of the day" offers advice on where to seek assistance. The Commission established the officer of the day position last year, because it has an obligation to assist the large number of people who do not understand the maze of administrative agencies regulating the employer-employee relationship.

The Commission supplies information to three local professional publications in order to keep practitioners in the field of public sector labor relations informed. The Massachusetts Labor Relations Reporter publishes information concerning decisions, court cases, hearing elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commissions decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in the Government Employee Relations Report, the Bureau of National Affairs Labor Relations Referency Manual, and the Commerce Clearing House Labor Cases.

The Commission actively participates in the Boston Bar Association's Workshop for Labor Relations Practitioners. Commissioners or staff members have spoken at the Massachusetts Fire Chiefs Conference, the New England Public Employers Association, the Association of Massachusetts Town Counsels and City Solicitors, and the Institute of Industrial Relations at Holy Cross College.

Commission agents travel across the state in an effort to make its services more accessible. Most elections are conducted at the place of employment by a Commission agent. Commission agents also should travel, periodically to the western part of the state to conduct informal, formal, expedited hearings.

2. Union Registration and Union Contract File

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations, and the bargaining units they represent. Required information includes: the name and address of current officers; an address where notices can be sent; date of organization; date of certification; and the expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: "the aims and objectives of such organization, the scale of dues, initiation fee, fines and assessments to be charged to the members, and the annual salaries to be paid officers." This information is reported on standardized forms, which are available to the public.

Public employers are required to file copies of all collective bargaining agreements with the Commission.

FINANCIAL STATEMENT - FISCAL YEAR 1977
July 1, 1976 - June 30, 1977

Received from General Appropriation.....		$449,800.00
Expenditures		
Salaries	$367,250.00	
Special Services	10,635.00	
Supplies	30,500.00	
Travel	4,800.00	
Other Services & Expenses	27,964.00	
Total	$441,149.00	$441,149.00
Balance Unexpended Returned to State Treasury	$ 8,651.00	$ 8,651.00
Income from Sale of Stenographic Records	$ 4,720.00	$ 4,720.00

FINANCIAL STATEMENT - FISCAL YEAR 1976
July 1, 1975 - June 30, 1976

Received from General Appropriation.....		$448,523.00
Expenditures		
Salaries	$331,852.75	
Special Services	29,701.89	
Supplies	39,171.00	
Travel	3,983.40	
Other Services & Expenses	8,768.57	
Total	$423,477.47	$423,477.47
Balance Unexpended Returned to State Treasury	$ 25,045.53	$ 25,045.53
Income from Sale of Stenographic Records	$ 9,000.00	$ 9,000.00

July 1, 1976 - June 30, 1977

PERSONAL SERVICES

Salaries as of June 30, 1977

James S. Cooper	Chairman	$ 23,850.20
Garry J. Wooters	Commissioner	21,850.20
Rita Alberti	Principal Clerk	10,153.00
Frederick V. Casselman	Counsel II	17,113.20
Patricia Ciampa	Sr. Clerk and Typist	7,729.80
Ethel Conrad	Sr. Clerk and Stenographer	7,787.00
Ann Da Dalt	Labor Realtions Examiner	14,482.00
Mary DiBlasio	Sr. Clerk and Stenographer	7,787.00
Philip J. Dunn	Sr. Employee Relations Examiner	13,899.60
Sharon H. Ellis	Labor Relations Examiner	13,899.60
David F. Grunebaum	Counsel II	17,856.80
Alice T. Hintsa	Hearings Stenographer	13,605.80
Stuart A. Kaufman	Counsel II	17,856.80
Sharon Kinney	Jr. Clerk and Stenographer	7,004.40
Mary J. Lally	Labor Relations Examiner	17,394.00
Jean Lewis	Sr. Clerk and Stenographer	8,512.40
James M. Litton	Counsel II	18,600.40
Ralph Lyons	Hearings Stenographer	13,605.80
Robert McCormack	Counsel II	20,831.20
John L. McLaughlin	Labor Relations Examiner	17,394.00
Ezaura P. Palys	Principal Clerk	9,591.40
Norener Reid	Hearings Stenographer	11,921.00
Harvey M. Shrage	Asst. to Executive Secretary	12,420.20
Ourania Trypousis	Sr. Clerk and Stenographer	7,787.00
Maria Walsh	Sr. Bookkeeper	7,787.00
Arthur S. Weber	Head Clerk	9,635.60
Karen Zweig	Sr. Employee Relations Examiner	13,899.60
		$273,442.20

Vacant Positions		
Executive Secretary	$18,033.60	
Administrative Secretary	11,078.60	
Commissioner	21,850.20	
	$50,962.40	$ 50,962.40
		$324,404.60

July 1, 1975 - June 30, 1976

PERSONAL SERVICES

Salaries as of June 30, 1976

Robert B. McCormack	Counsel II	$ 19,237.00
James S. Cooper	Chairman	23,000.00
Alfonso M. D'Apuzzo	Executive Secretary	21,769.00
Ralph Lyons	Hearings Stenographer	12,334.40
Margaret Higgins	Hearings Stenographer	12,755.60
Shirley DeMarco	Principal Clerk	7,618.00
Ann Da Dalt	Labor Relations Examiner	13,049.40
John L. McLaughlin	Member, Labor Relations Commission	16,543.80
Henry C. Alarie	Member, Labor Relations Commission	21,000.00
Madeline H. Miceli	Member, Labor Relations Commission	21,000.00
Arthur Weber	Head Clerk	8,460.40
James Litton	Counsel II	16,263.00
Frederick Casselman	Sr. Employee Relations Examiner in lieu of Labor Relations Examiner	13,049.40
Mary Lally	Labor Relations Examiner	16,543.80
Ezaura P. Pałys	Sr. Clerk and Stenographer	8,387.60
Alice Hintsa	Hearings Stenographer	12,755.60
Pearl Grunin	Sr. Clerk and Typist	8,387.60
Patricia Ciampa	Jr. Clerk and Typist	6,154.20
Ourania Trypousis	Sr. Clerk and Typist	6,665.60
Deidra Thomas	Sr. Clerk and Typist	6,665.60
Jean Driscoll	Asst. to Executive Secretary	11,570.00
Harvey Shrage	Sr. Employee Relations Examiner	13,049.40
David Abel	Counsel II	16,263.00
Karl Frieden	Sr. Bookkeeper	6,936.80
Kathryn Noonan	Counsel II	16,263.00
Stuart Kaufman	Counsel II	16,263.00
Jean Lewis	Sr. Clerk and Stenographer	6,936.00

VIII. SUMMARY OF DECISIONS

The Public Employee Bargaining Law will enjoy its third anniversary on July 1, 1977. The statute can hardly be called the "new" collective bargaining law any longer. The Labor Relations Commission has issued over 500 written decisions interpreting General Laws Chapter 150E. This summary of cases is a compendium of many of the Commission's decisions. With the publication of Commission decisions by the Massachusetts Labor Relations Reporter, members of the public and the bar have immediate access to the Commission's interpretation of the law. This summary should make research and advice easier for everyone.

The cases discussed below are grouped under numbered sections which correspond to the sections of Chapter 150E.

Section 1 Definitions

Employee

The term "employee" has been broadly interpreted to encompass all those individuals employed by a public employer, except those specifically excluded by statute. City of Fitchburg, 2 MLC 1123 (1975). Thus, the Commission has extended coverage of the Law to regularly employed part-time employees, County of Plymouth, 2 MLC 1106 (1975); Grafton School Committee, 2 MLC 1271 (1976), including part-time employees who are full-time students. Quincy Library Department, MCR-2434, 3 MLC ___(1977). Call firefighters who do not work regular hours and who are under no obligation to respond to every alarm are also considered employees. Town of Lincoln, 1 MLC 1422 (1975). Probationary employees are entitled to protection under the Law, City of Fitchburg, supra, as are CETA employees.City of Springfield,

2 MLC 1233 (1975). The Commission has also determined that hospital interns, residents and fellows are employees, in spite of NLRB cases to the contrary. City of Cambridge, 2 MLC 1450 (1976); Worcester City Hospital, 3 MLC 1290 (1976).

Managerial Employees

Under the Law, employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, (b) assist to a substantial degree in the preparation for or conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

Decisions of the Commission designating managerial employees are based on the actual duties and responsibilities of employees, not those which the employer wishes to have the employee perform in the future. County of Worcester, 3 MLC 1273 (1976). A position must be funded and filled before the issue of managerial exclusion may be raised; Town of Wellesley, 2 MLC 1443 (1976). The exercise of mere supervisory authority is insufficient for excluding an employee as managerial; University of Massachusetts, 3 MLC 1179 (1976); Town of Wareham, 2 MLC 1555 (1976). Principals, assistant principals, and department chairpersons are not per se managerial employees and may engage in collective bargaining; school administrators who have only advisory authority in educational policy, have no substantial discretion in budget formulation, have never exercised appellate responsibility in the grievance procedure and have only participated on isolated occasions in collective bargaining, are not managerial employees; Wellesley School Committee, 1 MLC 1389 (1975). Administrators who make actual final policy decisions which are significant in relation to the public enterprise are managerial employees; Masconomet Regional School District, 3 MLC 1034 (1976). Administrators who review the contract proposals in the teacher's unit in order to prevent a possible negative impact on the administrators do not substantially participate in collective bargaining; Town of Holbrook, 1 MLC 1468 (1975). Evaluation of subordinate employees

is not sufficient to make a managerial employee, where the evaluation is not final and of limited impact in personnel decisions; New Bedford School Committee, 2 MLC 1215 (1975). Participation in any one of the disjunctive requirements must be substantial; Taunton School Committee, 1 MLC 1480 (1975), Lee School Committee, CAS-2035, 3 MLC ___ (1977).

Confidential Employees:

Section 3 excludes confidential employees from coverage under the Law. Section 1 provides that employees shall be designated as confidential "only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under" the Law. The Commission applies the confidential exclusion so as to preclude as few employees as possible from collective bargaining while at the same time establish an employer to operate its business. Silver Lake Regional School Committee, 1 MLC 1240 (1975).

Many of these cases have involved the issue of whether clericals who assist school administrative personnel are confidential employees. Secretaries were excluded when they regularly typed contract proposal for the employer's use in negotiations. Silver Lake Regional School Committee, supra. Conversely, employees have not been excluded merely because they have access to sensitive or confidential material such as financial data and personnel records. Wellesley School Committee, 1 MLC 1389 (1975). Secretaries to school superintendents and school committees have generally been excluded. See Silver Lake Regional School Committee, supra; Belchertown School Committee, 1 MLC 1304 (1975); Fall River School Committee, CAS-2136, 3 MLC ___ (1977). Similarly in the University of Massachusetts, a dean's reliance on department chairmen as a conduit to and from the faculty does not preclude the chairman from collective bargaining as confidential employees. Employees may directly assist excluded employees without assisting them in a confidential capacity. University of Massachusetts, 3 MLC 1179 (1976).

Section 2 Employee Right to Organize and Bargain Collectively

Section 2 provides that "Employees shall have the right to self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing." Furthermore, this section provides employees with the right "to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion."

Protected activities include: picketing, City of Fitchburg, 2 MLC 1123 (1975); editing and publishing a union newsletter, Mount Wachusetts Community College, 1 MLC 1496 (1975); making pro-union speeches, Mount Wachusetts Community College, supra; initiating a grievance under a collective bargaining agreement, Town of Halifax, 1 MLC 1486 (1975); distributing pro-union literature, Southern Worcester County Regional Vocational School District, 2 MLC 1488 (1976); prosecuting grievances not within the context of a contractual grievance procedure, Harwich School Committee, 2 MLC 1095 (1975); non-disruptive picketing of School Committee meetings, and of the homes of School Committee members, and distribution to parents of leaflets in support of the employees' organizational or bargaining objectives, Southern Worcester County, supra; insisting upon the presence of a union representative at an investigatory interview reasonably perceived as potentially leading to discharge, Commonwealth of Massachusetts, Department of Public Welfare, SUP-2067 3 MLC _____ (1977); serving as union officer and member of union negotiating committee, and protesting the employer's unilateral changes in working conditions, Town of Sharon, 3 MLC 1060 (1976); seeking the assistance of the union, Commonwealth of Massachusetts, 2 MLC 1400 (1976); distributing leaflets and collecting signatures on a petition as an adjunct to the formal grievance procedure, City of Boston, 2 MLC 1101 (1976); and soliciting union authorization cards, and serving as union steward, Town of Wareham, 3 MLC 1334 (1976).

Improper tactics, such as acts of vandalism, are not protected activity. City of Fitchburg, 2 MLC 1123 (1975). Conduct which is physically intimidating, egregious or disruptive of the employer's business is also unprotected. Harwich School Committee, 2 MLC 1095 (1975).

In Southern Worcester County Vocational School District, supra, the Commission concluded that limited picketing at the School Committee members' places of employment was protected activity under this section. It was also decided that teachers had the right to distribute non-inflammatory leaflets to visiting parents of school children.

In determining whether employees' concerted activity is protected, the Commission looks to both the nature of employees' conduct and whether they made reasonable efforts to utilize the available grievance procedure. Employees may not circumvent their bargaining representative to negotiate directly with the employer. Even though the grievance procedure had not been exhausted, a leafletting and picketing compaign in support of a union grievance to improve conditions at Boston City Hospital was protected activity because it was not unreasonably disruptive of, nor indefensibly disloyal to the employer's operation. City of Boston, 3 MLC 1101 (1976).

Section 3 Determination of Appropriate Bargaining Units

The Commission's Discretion

Within certain statutory limits, the Commission has broad discretion in determining appropriate bargaining units. The Legislature has mandated that the Commission afford due consideration to three criteria: community of interest; efficiency of operations and effective dealings; and safeguarding the rights of employees to effective representation. These criteria are balanced by the Commission to serve the fundamental statutory objective of providing for stable and continuing labor relations.

The Largest Unit Practicable

The Commission has found that broad, comprehensive units, rather than small, fragmented units best facilitate stable and continuing labor relations. Generally the Commission seeks the largest unit practicable provided that there is sufficient community of interest among the employees included. Town of Athol, 2 MLC 1062 (1975). The 'touchstone' of community interest is a demonstration that the requested employees comprise a coherent and homogeneous group with distinct employment interests apart from excluding employees, sufficient to warrant separate representation. Thus, the professional faculty of the statewide network of community colleges were placed in one overall unit rather than in individual units at each campus. Community College, 1 MLC 1426 (1975). In Boston School Committee, 2 MLC 1557 (1976) the Commission combined two separate Supervisory units into one. Similarly, the Commission ruled that a Municipal Public Water Department should contain a single bargaining unit rather than a unit for each of the subdepartments. Town of Cohasset, 1 MLC 1184 (1974). However, a hearing officer held that teacher aides paid pursuant to federal or state grants were excluded from a unit of aides paid directly by the employer because they were selected and supervised differently and because they had different wages, benefits and methods of payment. City of Fall River, 3 MLC 1320 (1976). See also Town of Burlington, 3 MLC 1350 (1977).

Balkanization of bargaining units is not favored by the Commission. Thus the Commission refused to approve the creation

of a separate unit comprised of three attendance supervisors and two audio visual technicians, reasoning that such employees could better be placed in existing bargaining units with which they shared a community of interest. Pittsfield School Committee, 3 MLC 1493 (1977). See also Town of Dartmouth, 1 MLC 1257 (1975); Town of Harwich, 1 MLC 1376 (1975); City of Quincy, 3 MLC 1012 (1976); Barnstable County, 3 MLC 1444 (1976); City of Lowell, 3 MLC 1468 (1977); Quincy Library Department, MCR-2434, 3 MLC ____(1977).

Other Than Full-Time Employees

In determining appropriate units, the Commission has also dealt with employees who were not full-time workers. In Town of Lincoln, 1 MLC 1422 (1975), the Commission refused to include call firefighters in the unit with full-time firefighters. Although reaffirming the call firefighters' status as employees under the Law, the Commission concluded that they lacked a community of interest with regular firefighters who had significantly different bargaining concerns. Furthermore, the instability of the call firefighter work force and the extreme variations in the individual responses to fires compelled the conclusion that a unit of Lincoln call firefighters could not appropriately exercise collective bargaining rights. However, in Town of Burlington, 3 MLC 1350 (1977), a hearing officer found a group of eleven part-time traffic supervisors who worked 38 weeks a year to be an appropriate unit because the employees' hours and weeks of duty were clearly defined and because they enjoyed steady employment. Similarly, a unit composed entirely of evening school teachers was held to be appropriate in Pittsfield School Committee, 2 MLC 1523 (1976). The differences between evening and day school teachers were too significant to justify the inclusion of both groups into one unit and the needs of the seventy evening school teachers for effective representation were held to outweigh the concerns of the School Committee for efficiency of operations. At the University of Massachusetts, however, department chairmen, part-time faculty, librarians, and coaches were included in a bargaining unit with full-time, "tenure track" faculty. University of Massachusetts, 3 MLC 1179 (1976). In Town of Hamilton, 2 MLC 1512 (1976), a hearing officer concluded that part-time patrolmen should be excluded from the unit of full-time police because of substantially different training and performance expectations, basically different bargaining concerns, and radically different hours.

In dealing with seasonal personnel,the Commission looks closely at their turnover rate. In Bay State Harness Horse Racing and Breeding Association, 2 MLC 1340 (1976), the Commission noted that 70% of the seasonal employees involved had worked for the employer for at least two consecutive seasons. This percentage was considered high enough to warrant the exercise of collective bargaining rights. In contrast, see City of Gloucester, 1 MLC 1170 (1974), where the Commission found that summer employees did not constitute an appropriate unit because of the unique funding problems of municipal government.

When dealing with school systems, the Commission generally places teachers and administrators in separate units. The Commission will approve a combined teacher-supervisory unit, however, where there are few employees involved. See Chicopee School Committee, 1 MLC 1195 (1974).

The statutory criteria of Section 3 are applied with considerable flexibility. In City of Worcester, 1 MLC 1034 (1974), a vocational school librarian was placed in a unit with vocational school teachers rather than in one with other school librarians; not only was her job dissimilar in many respects from that of other librarians; but she had more student contact than most librarians. In Saugus School Committee, 2 MLC 1412 (1976) the Commission found that clerical employees should be severed from an already existing unit of custodial and cafeteria employees. The homogenity of the clerical group, the history of collective bargaining, the separateness of the group while in the unit, and the degree of integration of employees in the broad unit were among the factors that caused the Commission to recommend the unit determination.

When the Commission finds more than one proposed unit to be appropriate, the desires of the employees become a factor. Thus in Weymouth School Committee, MCR-2427, MCR-2428, 3 MLC____ (1977), the hearing officer ordered an election in which the clerical employees could choose to be represented in a unit by themselves or in a comprehensive unit together with the teacher aides.

When the employer and the employee organization are in agreement as to the composition of a bargaining unit, the Commission will generally adopt the agreement unless it is contrary to law or public policy or the rules and regulations

of the Commission. Town of Wrentham, MCR-2447. However, in City of Lowell, 3 MLC 1260 (1976), aff'd, MCR-2379, 3 MLC ____ (1977), where all parties agreed that a separate unit of accountants was appropriate, the Commission nevertheless affirmed a hearing officer's dismissal of the petition on the basis of the inappropriateness of the proposed unit.

If a party has contractually agreed to the inclusion of an employee in a bargaining unit, the party may be estopped for at least the duration of the contract from arguing for the employee's exclusion. City of Somerville, 2 MLC 1546 (1976), Pittsfield School Committee, 3 MLC 1082 (1976). But see City of Medford, 3 MLC 1238 (1976), reversing 2 MLC 1328 (1976), where the Commission voided a certification based upon such factors as employer confusion and inappropriateness of the agreed-to unit, notwithstanding the consent of all parties to the unit description.

Separate Supervisory Units

As noted above, the Commission generally favors units of supervisors separate from rank and file units, e.g. school administrators are normally separate from the teachers. Chicopee School Committee, 1 MLC 1195 (1974). When presented with a petition to sever superior officers from existing overall units in police and fire departments, the Commission looks to such factors as the supervisory authority and duties of the personnel involved, the desires of the employees (although these desire are not controlling), conflicts of interest, special negotiating concerns, and the size of the departments. See City of Everett, 3 MLC 1372 (1977); Town of Dedham, 3 MLC 1130, 3 MLC 1332 (1976); City of Cambridge, 2 MLC 1027 (1975).

Section 4 Procedures For Determining Exclusive Bargaining Representative, Contract and Certification Bars To An Election

Notice

Commission rules require that all interested parties be given notice of representation proceedings. MLRC Rules, Art. II, §6. The petitioning employee organization and the employer have a joint obligation to provide the Commission with information regarding other organizations that purport to represent any employees affected by the petition. City of Quincy, CAS-2062, 3 MLC ___ (1976).

Accretion and Clarification of Existing Bargaining Units

The Commission has broad power to investigate and decide representation questions arising out of existing units. See Art. II, Sections 17, 18 of the Commission's Rules and Regulations; City of Boston, 2 MLC 1353 (1976). This includes the power to exclude employees from an existing unit who are managerial, Wellesley School Committee, 1 MLC 1389 (1975), confidential, Silver Lake Regional School Committee, 1 MLC 1240 (1975), or otherwise inappropriately included, City of Boston, 2 MLC 1353 (1976), City of Gloucester, CAS-2147, 3 MLC ___ (1977). However, if a party has contractually agreed to the inclusion of an employee in a bargaining unit, that party may be estopped, at least for the life of the agreement, from arguing for the employee's exclusion. City of Somerville, 2 MLC 1546 (1976).

A petition for clarification, brought pursuant to Art. II, §17 of the Rules and Regulations, is also appropriate to add to an existing bargaining unit job classifications which are natural accretions to the unit. City of Worcester, 1 MLC 1034 (1974).

The Commission will allow the accretion if it comports with the intent of the parties at the time of certification or recognition; the new titles must necessarily share a community of interest with the existing unit. City of Somerville, 1 MLC 1234 (1975). A petition for clarification is not appropriate where the affected job title was in existence at the time of certification or recognition and was excluded from the unit by the parties. Town of Agawam, 2 MLC 1367 (1976) (Hearing Officer's Decision). Similarly, if the employee in the disputed job classification functions in a manner similar to employees previously excluded, a petition for clarification will

be dismissed; the Commission examines job functions, not merely job titles. Peabody School Committee, CAS-2053, 2057, 3 MLC___ (1977). A clarification petition is appropriate to change unit placement if the function and job duties of the disputed title have changed significantly since certification or recognition. Amesbury School Committee, CAS-2081, 3 MLC___ (1977) (Hearing Officer's Decision).

The Commission may order a self-determination election in rare cases where accretion is inappropriate because the disputed job title was previously excluded; employees in the disputed titles are given the choice of being represented by the incumbent in an existing unit or of not being represented in any unit. A self-determination election may be ordered where the petition is accompanied by a sufficient showing of interest, where there are compelling community of interest considerations, where the petition seeks to include all such employees, and where the reasons for the original exclusion no longer pertain. City of Quincy, MCR-2434, 3 MLC___(1977).

Contract and Certification Bars to an Election

Proceedings under Section 4 of the Law have often involved the contract bar doctrine, which prohibits the direction of an election, except for good cause, if a valid collective bargaining agreement is in effect. The doctrine is discretionary. It will be applied or waived depending on the facts of the case with a view toward fairness for employer and employee alike and stability of bargaining agreements. Easton School Committee 2 MLC 1111 (1975).

A contract will not operate as a bar where there is a fundamental intra-union dispute at the international level accompanied by a related disaffiliation at the local level. Such "schism" is essential. The Commission has refused to waive the contract bar even where the vast majority of unit employees have expressed clear dissatisfaction with their chosen representative. See City of Worcester, 1 MLC 1069 (1974), City of Salem 1 MLC 1172 (1974). A contract will not operate as a bar even though the parties agree to continue its terms during negotiations. University of Mass, 2 MLC 1001 (1975)

A successor contract, negotiated and ratified prior to the open period under the existing contract will not bar a petition which would be timely had the new agreement not been negotiated. Town of Saugus School Committee, 2 MLC 1414 (1976).

A contract must be signed by all parties to operate as a bar. Even when the terms were agreed on, the parties had agreed to sign, the contract was in near final form and some provisions had already been implemented, the contract was held ineffective as a bar because it was unsigned. Town of Maynard, 2 MLC 1253 (1975). See also, Hearing Officer's Ruling on Motion to Dismiss in Somerville School Committee, 2 MLC 1335 (1976).

Generally, pursuant to the certification bar, no election will be directed in a unit within one year of a prior election. However, a rival petition for certification will be processed by the Commission even though filed prior to the expiration of the year if the election is conducted after the statutory twelve-month period. There must be no contract bar. City of Gardner, 1 MLC 1115 (1974). A petition must be received at the Commission's office within the 180 to 150 day open period prior to the expiration of the existing contract. City of Springfield, 1 MLC 1446 (1975).

Election Petitions

Article II, Section 6 of the Commission's Rules and Regulations requires that a petitioner be designated as the exclusive representative by 30 percent of the employees in the proposed unit. The Commission's determination of the showing of interest is an administrative determination and is not subject to challenge. Duxbury School Department, 1 MLC 1020 (1974). The Commission may find that the 30 percent requirement is met if the petitioner based its showing on the employer's statement of the number of employees in the unit even though the employer's statement was inaccurate. Commonwealth of Massachusetts (Unit 4), SCR-2100, 3 MLC ___ (1977). An employer representation petition will be dismissed where there is no employee organization seeking recognition or claiming majority status in the unit sought. Commonwealth of Massachusetts, 1 MLC 1190 (1974). An employee petition for decertification must be in a unit co-extensive with the certified or recognized bargaining unit. City of Lynn, 2 MLC 1541 (1976). A petition, however, may be amended prior to or at the representation hearing, if the amended petition does not seek a substantially different unit. Commonwealth of Massachusetts (Unit 4), SCR-2100, 3 MLC ___, (1977).

The Commission exercises wide discretion in the manner and method of conducting representation elections. Community Colleges, 2 MLC 1146 (1975). Thus the Commission may utilize on-site or mail ballot elections. Furthermore, the Commission

has the exclusive power to determine the name of the organization appearing on the ballot in order to insure that the ballot is not confusing to the voters. Department of Public Welfare, 1 MLC 1127 (1974). The Commission's certification runs to the employee organization appearing on the ballot. Commonwealth of Massachusetts (Units 1, 2, 6, 8 and 9), 2 MLC 1322 (1976).

An employee organization's failure to comply with the filing requirements of sections 13 and 14 of the Law does not require that an election be set aside. In Commonwealth of Massachusetts, 2 MLC 1322 (1976), the Commission conditioned certification upon the expeditious compliance of the petitioner with the Law's reporting provisions.

The Commission may postpone determinations of managerial exclusions until after the election has been conducted. The claimed managerial employees will vote under challenge and the Commission will not count their ballots until the challenges are resolved. Community Colleges, 2 MLC 1146 (1975). The Commission may postpone taking evidence on managerial status until after the election. Commonwealth of Massachusetts (Unit 6), SCR-2103, 3 MLC ___, (1977). The Commission allows non-employees to act as observers at an election. City of Quincy, 1 MLC 1161 (1974).

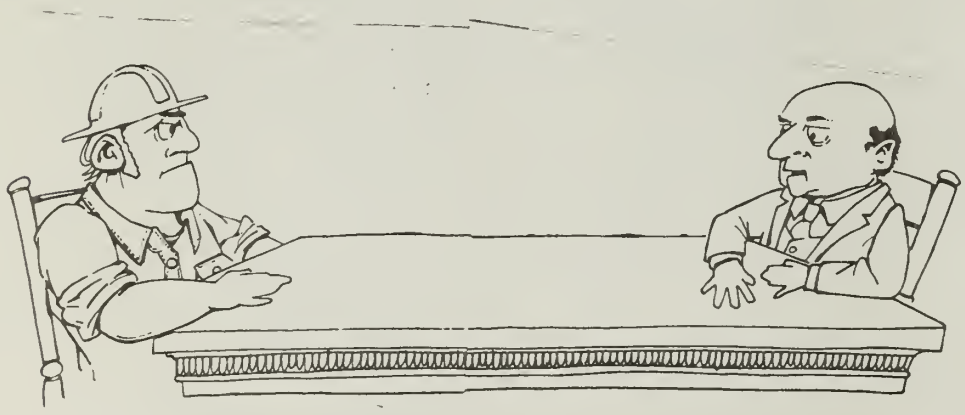
A party must file its objections to the conduct of an election within five days of the count. The Commission will not conduct a post-election hearing if the objections to the election raise no legally significant issues. Town of Rockland, 1 MLC 1217 (1974). The Commission will not consider matters raised as objections to the election if they should have been raised at the pre-election representation hearing. Town of Rockland, supra. A party seeking to set aside an election because of conduct occurring prior to or during the course of the election must furnish evidence that the conduct had a substantial impact on the election results. City of Boston, 2 MLC 1275 (1976). Only a party in interest can object to an election. Boston School Committee, 3 MLC 1043 (1976).

Where one of the parties to an election submitted an official ballot with partisan election propaganda superimposed on it, the Commission found that such propaganda and its timing close to the election was cause to set that election aside. Commonwealth of Massachusetts, 2 MLC 1261 (1976). The Commission will not overturn an election on the ground of misrepresentation unless a party has substantially misrepresented a highly material fact the truth of which lies within the special knowledge of the party making the misrepresentation. An election will

not be set aside if the voters have independent knowledge with which to evaluate the misrepresentation or if there was no substantial impact on the election. Commonwealth of Massachusetts, 3 MLC 1067 (1976). The Commission will not set aside an election because of minimal inaccuracies in the voter eligibility list. An employer's good faith and substantial effort to provide the list will suffice. City of Quincy, 1 MLC 1161 (1974).

Voluntary Recognition

Article II §5.2 of the Commission's Rules and Regulations, provides for voluntary recognition of an employee organization by the employer. In order to enter into a recognition agreement the employer must: (1) have a good faith belief in the employee organization's majority status in the unit; (2) post a notice, of intention to recognize the employee organization, for a period of twenty days prior to recognition; and,(3) set forth in writing in the agreement the specific unit involved. No recognition may be granted where, during the posting period, a valid representation petition, raising a question concerning representation, has been filed with the Commission.



Section 5 Duty of Fair Representation

Section 5 of the Law provides that the exclusive representative "...shall be responsible for representing the interest of all [unit] employees without discrimination and without regard to employee organization membership."

The Commission has interpreted this section to impose upon employee organizations a duty to represent fairly all members of the unit in all phases of collective bargaining, including both the negotiating of contracts and the processing of grievances. A breach of this duty is considered a prohibited practice. Framingham School Committee, 2 MLC 1292 (1976). In that case, the Association was found to have breached its duty of fair representation by withdrawing a meritorious grievance without informing the grievant or his attorney, and by refusing to bear one-half the cost of arbitration as provided in the collective bargaining agreement.

Although a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner, a union need not formally process every grievance filed if it in good faith determines that a grievance is without merit. Local 285, SEIU, SUPL-2006, 3 MLC ____ (1976).

In a recent Hearing Officer's Decision presently on appeal, the Hearing Officer noted that a public employee's right to due process in some situations may require that unions in the public sector be held to a higher standard in representing their constituents than private sector unions. Robert W. Kreps, 3 MLC 1087 (1976).

Section 6 Duty and Scope of Bargaining

Section 6 of the Law imposes a duty on both the employer and the exclusive representative of the employees to negotiate in good faith about wages, hours, standards of productivity and performance and any other terms and conditions of employment. This obligation does not compel either party to agree to a proposal or make a concession. An employer cannot refuse to bargain because a prohibited practice charge has been brought against him. Commonwealth of Massachusetts, SUP-2078B, 3 MLC ____ (1976).

Good faith negotiations mean that both sides have a sincere desire to reach agreement, as evidenced by the totality of their conduct. City of Chicopee, 2 MLC 1071 (1975). The existence of agreement on a number of major issues may be sufficient to negate an inference of bad faith arising from insistence to impasse on one specific issue. King Philip Regional School Committee, 2 MLC 1393 (1976).

While the Law does not compel agreement on any issue, neither can one party reject the other's proposals without presenting counter-proposals, City of Chelsea, MUP-2386, 3 MLC ____ (1977), or refuse to discuss modification of contract language or changes in existing benefits. Town of Saugus, 2 MLC 1480 (1976).

Since the environment in which negotiations take place is so important to the proper functioning of the bargaining process, the Commission has found that insistence to the point of impasse on the issue of bargaining in open session (i.e. bargaining meetings open to the public) violates the Law. Town of Marion, 2 MLC 1256 (1975); Town of Norton, 3 MLC 1140, (1976); Town of Winchendon, 3 MLC 1316 (1976). However, this does not preclude negotiations in a public forum if the parties so agree, City of Attleboro, 3 MLC 1408 (1977), nor does it mean that the parties may have no access to the press, unless that privilege is voluntarily foregone or overriden by statute, so long as the character, timing and quantity of statements to the press comports with good faith. Town of Stoneham, 3 MLC 1355 (1977).

The duty to bargain also encompasses the obligation on the part of the employer to negotiate with the employee representative before altering wages, hours or working conditions, City of Chelsea, 1 MLC 1299 (1975); Town of Marblehead,1 MLC 1140 (1974), even if the change may be one welcomed by the union. City of Chicopee, 2 MLC 1071 (1975). Failure to negotiate before instituting a change violates the Law regardless of the good faith of the employer, Town of Natick, 2 MLC 1086, 1091 (1975), where the following elements are present:

1. a pre-existing condition of employment;

2. a unilateral alteration;

3. an effect on a mandatory subject of bargaining, Town of North Andover, 1 MLC 1103, 1106 (1974).

The change violates the Law where its scope and impact are more than very minimal. Worcester School Committee, MUP-2303, 3 MLC ____ (1977).

A union has an obligation to object to a unilateral change on the part of the employer in a timely fashion or the Commission may find that it has waived its right to bargain about the matter, City of Lowell, 3 MLC 1001 (1976), providing that its waiver was a knowing and conscious one. City of Boston, 3 MLC 1450 (1977). The filing of a charge with the Commission soon after the

unilateral change will be viewed as an objection to the unlawful act and preclude the finding of a waiver. City of Everett, 2 MLC 1471 (1976).

The subjects about which the employer and employee representative must bargain are those which have a direct impact on terms and conditions of employment. Town of Danvers, MUP-2292, 2299, 3 MLC ____ (1977). The Commission has found that the practice of granting union officials full time off for union business, City of Boston, 3 MLC 1450 (1977); procedures for promotion, Town of Danvers, MUP-2292, 2299, 3 MLC ____ (1977); initial salary levels for newly created bargaining unit positions, Melrose School Committee, 3 MLC 1299 (1976); job duties, Town of Danvers, supra; assignment of unit work to non-unit personnel, Town of Danvers, supra; and residency requirements for employees, Boston School Committee, MUP-2503, 2528, 2541, 3 MLC ____ (1977), are mandatory subjects of bargaining. If the parties stipulate that certain subjects are mandatory, a refusal to bargain "on the record" about them violates the duty to bargain in good faith. Local 841, International Association of Firefighters, 3 MLC 1378 (1977). Permissive subjects of bargaining include the number of personnel per shift, Town of Danvers, supra.

Alternatively, there are some subjects which the parties may not include in their agreements, such as automatic wage increases for one unit of employees conditioned on the wage increases bargained by employees in other units. Medford School Committee, 3 MLC 1413 (1977). However, the Commission has distinguished this issue from a lawful agreement to reopen a contract in a unit if other units negotiate a more favorable settlement. Medford School Committee, supra.

Once an agreement is negotiated, a negotiation subcommittee has a duty to support the proposals it has agreed to before the full committee it represents in collective bargaining. Spencer-East Brookfield Regional School Committee, 3 MLC 1400, (1977) (H.O. Decision). Agreement by the employer brings with it the duty to request funding and to otherwise facilitate the implementation of the agreement's provisions, including funding from existing sources unless otherwise specified in the agreement. Worcester School Committee, 2 MLC 1283 (1976). Absent a valid claim of statutory or legal impediment, failure to request funding constitutes a per se violation of the Law. City of Chicopee, 2 MLC 1071 (1975); Mendes v. Taunton, 1974 Mass. Adv. Sh. 1291, 315 N.E. 2d 865 (1974).

Section 7 Maximum Term for Collective Bargaining Agreement

A collective bargaining agreement which automatically continues beyond three years unless either party proposes to change it, does not violate §7, which puts a three year limit on contracts. By not proposing changes the parties are, in effect, agreeing to a new contract. Town of Burlington, MUP-2370, 3 MLC ____(1977).

Section 8 Final and Binding Arbitration

When requested to do so by an employer or employee organization, the Commission may order binding grievance arbitration pursuant to Section 8 of the Law upon finding two threshold facts. First, the parties must have executed a written agreement which does not provide for the resolution of grievances through binding arbitration. Second, there must be a dispute concerning the interpretation or application of that written agreement. Town of Wayland, 3 MLC 1367 (1977).

In contrast, where the parties to a contract have agreed upon the binding arbitration of the dispute in question a Section 8 order is not appropriate. Town of East Longmeadow, 3 MLC 1047 (1976). In that case, the party seeking to enforce the contractual arbitration provision should proceed in Superior Court pursuant to G.L. chapter 150C. See Town of Danvers, 1 MLC 1231 (1974).

A Section 8 order of binding arbitration is appropriate even though the collective bargaining agreement has expired subsequent to the grievance. Board of Trustees of State Colleges (Worcester State College), 1 MLC 1474 (1975). But where there is no written contract in effect at the time of the alleged contract breach, a Section 8 order will not issue. Town of East Longmeadow, supra.

If an employee elects to arbitrate a grievance involving suspension, dismissal, removal or termination, that arbitration is the exclusive procedure available to the employee. But where the grievance does not involve one of those issues, an employee organization may obtain a Section 8 order even though the aggrieved employee is pursuing alternate remedies. Board of Trustees of State Colleges (Worcester State College), Supra. See also Town of Wayland, supra.

When it receives a request for binding arbitration, the Commission does not itself interpret the collective bargaining agreement. The Commission will order arbitration so long as the dispute is "arguably arbitrable". Board of Trustees of State Colleges (Worcester State College), supra. Where no arbitrator could reasonably concur with the petitioner's position, however, the Commission will not order futile arbitration. Sturbridge School Committee, 1 MLC 1381 (1975).

An employee organization may, with regard to a specific and narrow class of disputes, expressly waive its Section 8 right to request binding arbitration. Worcester School Committee, 2 MLC 1174 (1975). The waiver must be clear and unmistakable.

Upon receipt of a request for binding arbitration, the Commission notifies all interested parties. A period of ten days from receipt of the notification is allowed for an opposing party to set forth in writing any objections to the request. If the party fails to submit objections to the request for binding arbitration and the Commission determines that an order for binding arbitration should issue, such orders will not provide for a show cause hearing. If objections to the request for binding arbitration are timely filed, the Commission shall determine on a case by case basis whether an order for binding arbitration will issue and if an order issues, whether it will provide for a show cause hearing. Board of Trustees of State Colleges (Fitchburg State College), 2 MLC 1344 (1976).

Section 9 Impasse; Mediation; Fact-finding

Section 9 establishes a mechanism for the resolution of bargaining impasse through mediation, and, if necessary, fact-finding, procedures. Under sections 10(a)(6) and 10(b)(3), it is a prohibited practice to refuse to participate in good faith in mediation and fact-finding. The consistent failure of a public employer to attend mediation sessions after receiving timely notice of such meetings constitutes a per se violation of the letter and spirit of the Law. Town of Rockland, 3 MLC 1359 (1977). A public employer may not refuse to bargain even after an impasse where there has been a passage of time and the union requests the resumption of negotiations. Lawrence School Committee, 3 MLC 1304 (1976). The request for renewed

bargaining need not state the nature of the concessions the party is willing to make. Lawrence School Committee, supra.

The continued refusal by a public employer to comply with the procedural grievance arbitration provisions of a duly executed contract constitutes a per se violation of its duty to participate in good faith in those procedures. City of Chelsea, 3 MLC 1169, affirmed 3 MLC 1384 (1977).

The fact-finding procedure should be a fluid one inasmuch as it is designed to encourage settlement. Therefore, mere alteration of proposals during the fact-finding process is not a prohibited practice. Local 1009, International Association of Fire Fighters, 2 MLC (1975). Neither is it a breach of the duty to participate in good faith to release information to the media at its request, if the release neither frustrates fact-finding nor contributes significantly to a deadlock of negotiations. Local 1099, IAFF, supra. This assumes, of course, that the parties had not established ground rules concerning news releases during negotiations. Town of Maynard, 2 MLC 1141 (1975), affirmed 2 MLC 1281 (1976).

The withdrawal of an improved offer prior to fact-finding and retreat to a less favorable position, is evidence of bad faith. Town of Saugus, 2 MLC 1480 (1976). Egregious misrepresentation of facts to the fact-finder may constitute a prohibited practice. Factors which may mitigate against such a finding include: complexity of the issues; commission of a similar error by the complaining party; opportunity for rebuttal; and absence of reliance by the fact-finding upon the misrepresentation. Local 1099, International Association of Fire Fighters, supra. Submission of permissive subjects to the fact-finder over the timely objection of the other party constitutes a breach of the duty to participate in good faith in fact-finding proceedings in the case of police and firefighters. Local 1099, International Association of Fire Fighters, supra.

Where an employer refuses to comply with an arbitrator's award and forces other employees to file parallel grievances, the employer violates Section 10(a)(6). But the employer may in good faith contend that the fact situation in the second grievance is not covered by the earlier award. City of Boston, 2 MLC 1331 (1976).

Section 9A. Strike Investigations

Section 9A (a) prohibits public employees and employee organizations from striking or inducing or encouraging work stoppages by public employees. Under Art. IV, Section 3 of the Commission's rules, when a strike occurs or is about to occur, a public employer may petition for a strike investigation. The petition must identify the parties allegedly in violation of Section 9A(a), and must contain certain other information needed by the Commission to carry out an investigation. Upon receipt of a proper petition, the Commission gives notice by telegram or other prompt means to interested parties. Pursuant to this notice, the Commission holds an investigatory proceeding at its offices. This proceeding is usually held within a day of the filing of the petition.

While the formal presentation of sworn testimony is often not necessary at the investigation, the petitioner must present facts sufficient for the Commission to conclude that a violation of Section 9A(a) has occurred. Alliance, AFSCME/SEIU, AFL-CIO, SI-29 (1976). Where material facts are disputed, the Commission agent may call for sworn testimony. If it concludes that a violation of Section 9A(a) has occurred, the Commission will issue an interim order directing the end of the work stoppage. The Commission's interim order may also address some of the issues underlying the work stoppage, especially where related prohibited practice charges are involved, and require the parties to participate in accelerated bargaining, mediation or factfinding.

In Beverly Police Benevolent Association, 3 MLC 1229 (1976), the Commission concluded that police officers did not violate Section 9A(a) where they refused to work overtime. Their collective bargaining agreement specified that overtime was voluntary, and the refused overtime was non-emergency in nature. Where overtime is required by contract or is emergency in nature, concerted refusal to work such overtime constitute a 9A(a) violation. Town of Arlington, 3 MLC 1276 (1976).

Section 10 Prohibited Practices

Employer Prohibited Practices

Section 10(a)(1) makes it unlawful to interfere with, restrain or coerce an employee in the exercise of any right under the Law. Since the typical 10(a)(1) violation occurs when an employee's rights under section 2 are infringed the reader is referred to the discussion of section 2 of the Law.

Section 10(a)(2) makes it a prohibited practice to dominate, interfere or assist in the formation, existence or administration of any employee organization. To enter a stipulation with a challenging union that the incumbent's contract would be continued while its decertification petition was pending was a prohibited practice, even when executed in the interest of maintaining labor stability. City of Worcester, 1 MLC 1265 (1975). An employer was found to be in violation of section 10(a)(2) where it refused to bargain over certain subjects with a union representing one unit of employees, but bargained over the same subjects with a union representing another unit of employees. Town of Natick, 2 MLC 1149 (1975).

Section 10(a)(3) provides that an employer may not discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization. This provision extends to all concerted, protected activity. Town of Somerset, MUP-2363, 3 MLC ___ (1977). An employer's action will be viewed as discriminatory if it is motivated either in whole or in part by an employee's protected activity. Ronald J. Murphy, 1 MLC 1271 (1975). The burden of establishing a violation by a preponderance of the evidence rests upon the charging party. Town of Dennis, 3 MLC 1014 (1976). In order to establish a prima facie case the charging party must offer evidence tending to prove the following essential elements: some adverse action taken by the employer; union or other protected activity; employer knowledge of the activity; employer motivation to penalize or discourage union activity. Town of Somerset, MUP-2363, 3 MLC ___ (1977). Once the aggrieved employee has established a prima facie case, the burden shifts to the employer to show that

he was not motivated by a discriminatory purpose but by a "nondiscriminatory business justification." Town of Tewksbury, 2 MLC 1158 (1975); Town of Sharon, 2 MLC 1205 (1975).

The burden of establishing improper motivation can be satisfied by circumstantial evidence and the reasonable inferences drawn therefrom. Harwich School Committee, 2 MLC 1095 (1975); Town of Somerset, MUP-2363, 3 MLC ___ (1977). Factors considered in determining the existence of improper motivation include: timing of the discharge coincidentally with the protected activity, Ronald J. Murphy, 1 MLC 1271 (1975); visibility of the employee in his or her support of the union, Town of Wareham, 3 MLC 1334 (1976); abruptness of the discharge; the employer's general hostility toward the union or toward concerted activity, Ronald J. Murphy, 1 MLC 1271 (1975); inconsistent or shifting reasons for the discharge or other discipline, Mt. Wachusett Community College, 1 MLC 1496 (1975); sudden resurrection of previously condoned transgressions, Town of Sharon, 2 MLC 1205 (1975); staleness of charges, Town of Halifax, 1 MLC 1486 (1975); surveillance and compilation of information concerning the employee, Town of Sharon, 2 MLC 1205 (1975); comparative treatment; triviality of reasons for discharge, Town of Wareham, 3 MLC 1334 (1976); unwarranted severity of penalty; prior work record, Town of Sharon, 2 MLC 1205 (1975).

The inference that one employee is unlawfully discharged is not necessarily rebutted by evidence that the employer did not discriminate against another employee who also actively engaged in protected activity. Town of Halifax, 1 MLC 1486 (1975). It is not discriminatory for an employer to transfer an employee to another shift to permit the employee to perform a more skilled job commensurate with his or her skills. County of Worcester, 3 MLC 1154 (1976). Termination of employees under a comparative rating system was held to be lawful even though the employees were active in union affairs, where there was an absence of discrimination in the rating process. Town of Dennis, 3 MLC 1014 (1976).

Section 10(a)(4) makes it a prohibited practice for a public employer to discharge or otherwise discriminate against an employee because he or she has signed or filed an affidavit, petition or complaint or given testimony under

the Law or because he or she has formed, joined or chosen to be represented by an employee organization. In Town of Wareham, 3 MLC 1334 (1976), the Board of Sewer Commissioners was held to be in violation of section 10(a)(4) for discharging one employee upon his stated intention of pursuing redress of his grievances and another for giving testimony at the Commission.

An employer may not condition an employee's promotion on the union's willingness to eliminate the position from the previously certified bargaining unit. Town of Swansea, 3 MLC 1484 (1977).

Section 10(a)(5) provides that it is a prohibited practice for an employer to refuse to bargain in good faith as required in Section 6. This duty to bargain in good faith is discussed under Section 6. supra.

Section 10(a)(6) is similarly discussed under Section 9, supra.

Union Prohibited Practices

Section 10(b)(1) makes it a prohibited practice for the employee organization to interfere with, restrain or coerce any employer or employee in the exercise of any right guaranteed under the Law. It is the union counterpart of Section 10(a)(1). Section 10(b)(1), in relation to Section 5, makes it a prohibited practice for the union to fail "to be responsible for representing the interests of all such employees (in the bargaining unit) without discrimination and without regard to employee organization membership". See Section 5, supra.

Section 11 Complaints of Prohibited Practices

This section specifies the procedures for processing complaints of prohibited practices, and grants the Commission authority to issue appropriate remedial orders.

Commission Procedures

The allegations in a complaint filed under Section 4 need not conform to the technical rules of pleading; the complaint is legally sufficient if it enables the respondent to understand the issues raised so that it can prepare its defense. Burlington School Committee, 1 MLC 1179 (1974).

Section 4 and Section 11 of the Law provide that a hearing conducted under the Act may be designated as an Expedited Hearing, in which case the hearing may be conducted and decided by any member or agent of the Commission. Such Expedited Hearings are designated to relieve the crowded docket of the agency. These expedited proceedings are recorded by tape rather than by stenographic means. A Hearing Officer's order becomes final and binding unless review by the Commission is requested within ten days. A party's due process rights are not per se violated because the Commission reviews sound recordings of an Expedited Hearing instead of written records. But the recordings must be sufficiently clear to make intelligible the testimony of the witnesses. Town of Sharon, 3 MLC 1052 (1976).

Review of Hearing Officer Decisions

The Commission has adopted the following procedures for review of a hearing officer's decision:

> The mere filing of a Notice of Appeal of a Hearing Officer's decision does not entitle the appellant to de novo review of the entire proceedings. If the appellant claims that errors of law were made by the Hearing Officer in reaching his or her decision, the timely filing of an appeal suffices to bring these issues before the Commission. Supplementary statements containing legal arguments on specific points will, of course, facilitate the Commission's deliberations and are always carefully considered.
>
> If the appellant claims that the Hearing Officer erred in factfinding, however, it must

> do more than simply file a general appeal to the Commission. In the absence of timely filed supplementary statements of the parties specifically directing the Commission's attention to alleged incorrect findings of fact, the Commission will accept the Hearing Officer's fact findings and limit its review to the Hearing Officer's conclusions of law. The reasons for this rule are obvious. The Hearing Officer has had the opportunity during a hearing to observe the demeanor of witnesses and draw conclusions as to the credibility. Moreover, the expedited hearing procedure was adopted by the Commission to speed the administrative processes. It became increasingly difficult for the Commission to expeditiously cope with its increasing caseload if the full Commission was required to find all of the facts in a given case. Now, to automatically review each factual determination made by the Hearing Officer, even those which may not actually be disputed by the parties, would result in precisely the diseconomy which the Commission was attempting to avoid in establishing the expedited hearing procedure. Therefore, we require that an appellant point out, by way of a timely-filed supplementary statement, the specific findings of fact which are claimed to be erroneous.
> Town of Dedham, 3 MLC 1332 (1976).

Rulings made by Hearing Officers during Expedited Hearings may not be appealed to the full Commission prior to the conclusion of the case before the Hearing Officer. Somerville School Committee, 2 MLC 1335 (1976).

When a complaint raises issues that were decided or may be decided through fair and regular arbitration proceedings agreed to by the parties, and where the decision is not repugnant to the Law, the Commission will defer to the arbitrator's decision. The Commission's policy is designed to favor arbitration, and to discourage forum shopping and relitigation of issues. This deferral policy will be applied in prohibited practice cases and, where appropriate, in representation cases. Boston School Committee, 1 MLC 1287 (1975); Cohasset School Committee, MUP-419 (6/19/73).

Remedies

The agency has broad powers to order relief if it finds that a prohibited practice has been committed. It may issue cease and desist orders, and it may order reinstatement with full back pay, preservation of records necessary to determine back pay awards, and posting of notices. City of Boston, 1 MLC 1271 (1975).

The Commission conducts supplemental proceedings to determine the amount of back pay due to a discharged employee. Back pay is determined by using the following formula: Net back pay = gross back pay - (interim earnings - expenses). In applying this formula, gross pay is to include such items as overtime, bonuses, vacation pay, holiday pay, retirement benefits, insurance benefits and tips. Interim earnings shall include only that income attributable to new employment. Thus, income from unemployment compensation, welfare or disability payments is not included in interim earnings. Six percent interest may be added to the back pay award. The employee's burden is merely to establish gross pay. The employer must establish interim earnings and other set-offs. The employee must mitigate damages by seeking suitable employment. Town of Townsend, 1 MLC 1450 (1975). The Commission may estimate back pay when exact computation is not possible, as long as there is sufficient evidence upon which to base a reasoned conclusion. The employer waives the right to contest any figures if it does not appear at the hearing on this matter. Town of Townsend, supra.

Where an employee was unlawfully discharged one day before he would have became a permanent civil service employee, the Commission ordered the employer to rehire the employee and grant him immediate status as a permanent employee. City of Boston, 3 MLC 1101 (1976). The Commission has also ordered the employer to remove from an unlawfully discharged employee's personnel records any reference to the discharge. City of Boston, supra.

In cases where there has been a refusal to bargain, the Commission ordinarily enters a bargaining order. Where the Commission finds that the employer has unilaterally altered wages, hours, terms or conditions of employment, the usual remedy has been to order a return to the status quo ante, along with a bargaining order. Town of Marblehead, 1 MLC 1140 (1974); City of Everett, 2 MLC 1471 (1976). In the latter case, the Commission also issued a make-whole order, directing the City to compensate firefighters at the rate of ten per cent of their ordinary wages for the hours they were required to perform floor patrol under an unlawful, unilaterally-

instituted change in working conditions. The Commission has also ordered an employer to extend to unit employees the benefits contained in those proposals that had been initialed by both negotiators, and later repudiated by the employer when the parties failed to agree upon other items. Middlesex County Commissioners, 3 MLC__(1977). Similarly, where an employer violated §10(a) (5) by withdrawal of a tentative agreement, after the union has already made concessions to make this tentative agreement, a Hearing Officer ordered the employer to return to the bargaining table upon the basis of the status quo before the tentative agreement was withdrawn by the employer. Spencer-East Brookfield Regional School Committee, 3 MLC 1400 (1977). In Boston School Committee, 1 MLC 1287 (1975), the employer was ordered to pay to the union the dues and agency service fees that normally would have accrued to the union absent the employer's unlawful refusal to bargain. In an analogous situation, a union was ordered to return to a unit employee, if she tendered her resignation from the union, the dues she had paid after she had been unlawfully encouraged to join the union. Local 285, SEIU, 3 MLC__, SUPL-2006 (1977).

Section 12 Agency Service Fee

Section 12 of the Law provides that public employees may be charged an agency service fee, as a condition of employment if the fee is required by a negotiated collective bargaining agreement ratified by a vote open to all members of the bargaining unit, and if the fee is proportional to the costs of negotiating and administering the collective bargaining agreement. The Commission has adopted regulations requiring financial disclosure by unions charging an agency service fee to non-members, and requiring that notice be given to all employees of votes to ratify agency fee agreements. Non-members may not be required to defray expenses for political or charitable contributions; social activities; educational programs unrelated to collective bargaining; fines or penalties assessed for illegal activities; organizing costs; or for health insurance, retirement or pension benefits. Rules and Regulations, Article IX.

CHART 1

HOW DID PUBLIC EMPLOYEE BARGAINING EVOLVE?

1935 Wagner Act (National Labor Relations Act)
Gave collective bargaining rights to private sector employees in interstate commerce.

1937 Massachusetts passes Chapter 150A, "Baby Wagner Act," extending bargaining rights to private sector employees within the commonwealth; Labor Relations Commission established.

1958 All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.

1960 Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the matter and method of bargaining Chapter 40, Section 4C.

1964 State employees given the right to bargain with respect to working conditions (but not wages). Chapter 149, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations that bargaining took place.

1965 Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment. Chapter 149, Sections 178G-N. This repealed Chapter 40, Section 4C.

1969 Mendonca Commission established by legislature to revise public employee bargaining laws.

1973 All public employees--state and municipal--extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.

1974 Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission; modify union unfair labor practices; modify standards for exclusion of managerial employees.

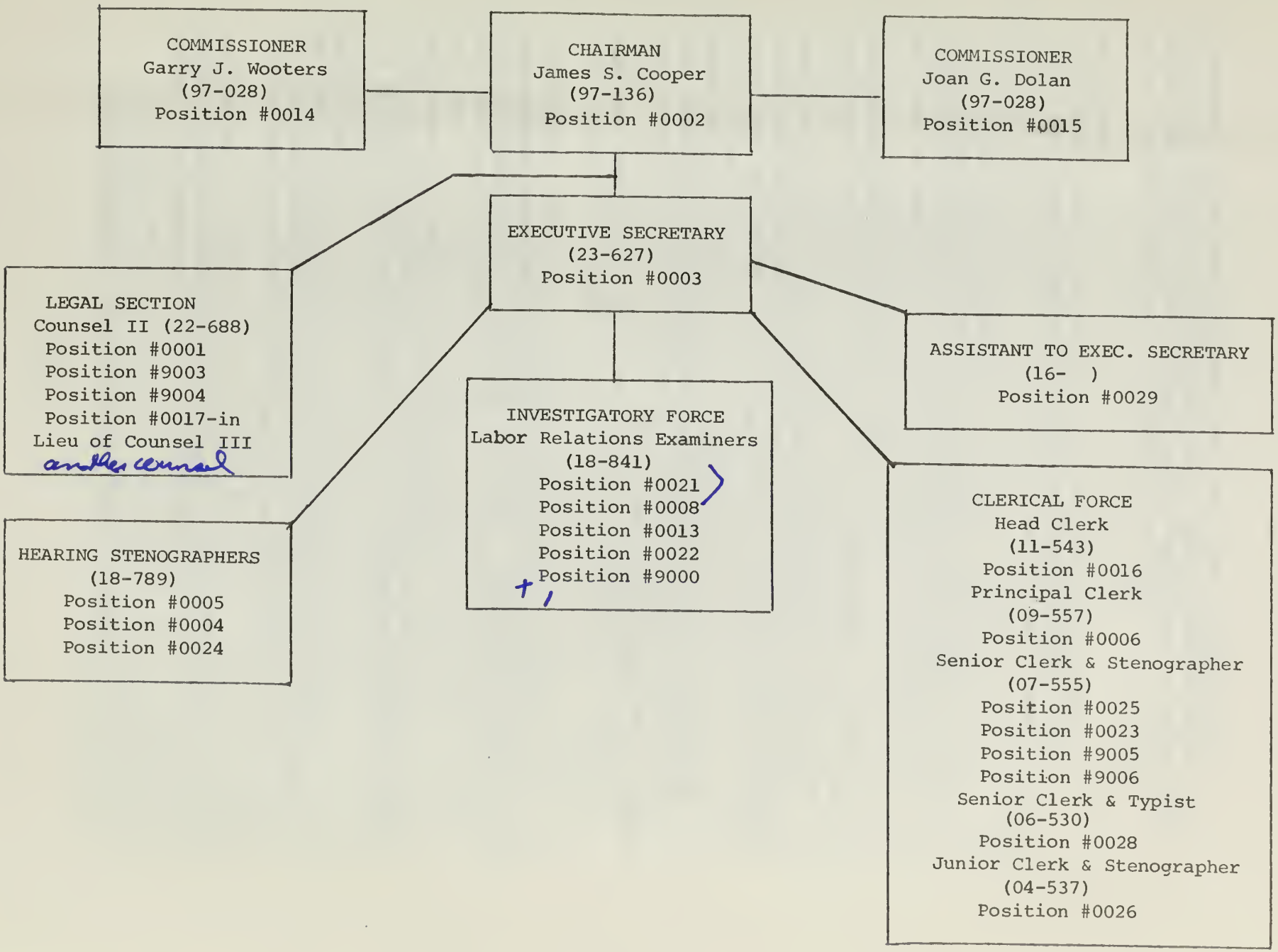
1975 MLRC issued standards for Appropriate Bargaining Units affecting fifty five thousand state employees in more than two thousand job classifications. Ten statewide units were created - five non-professional and five professional.

CHART 2

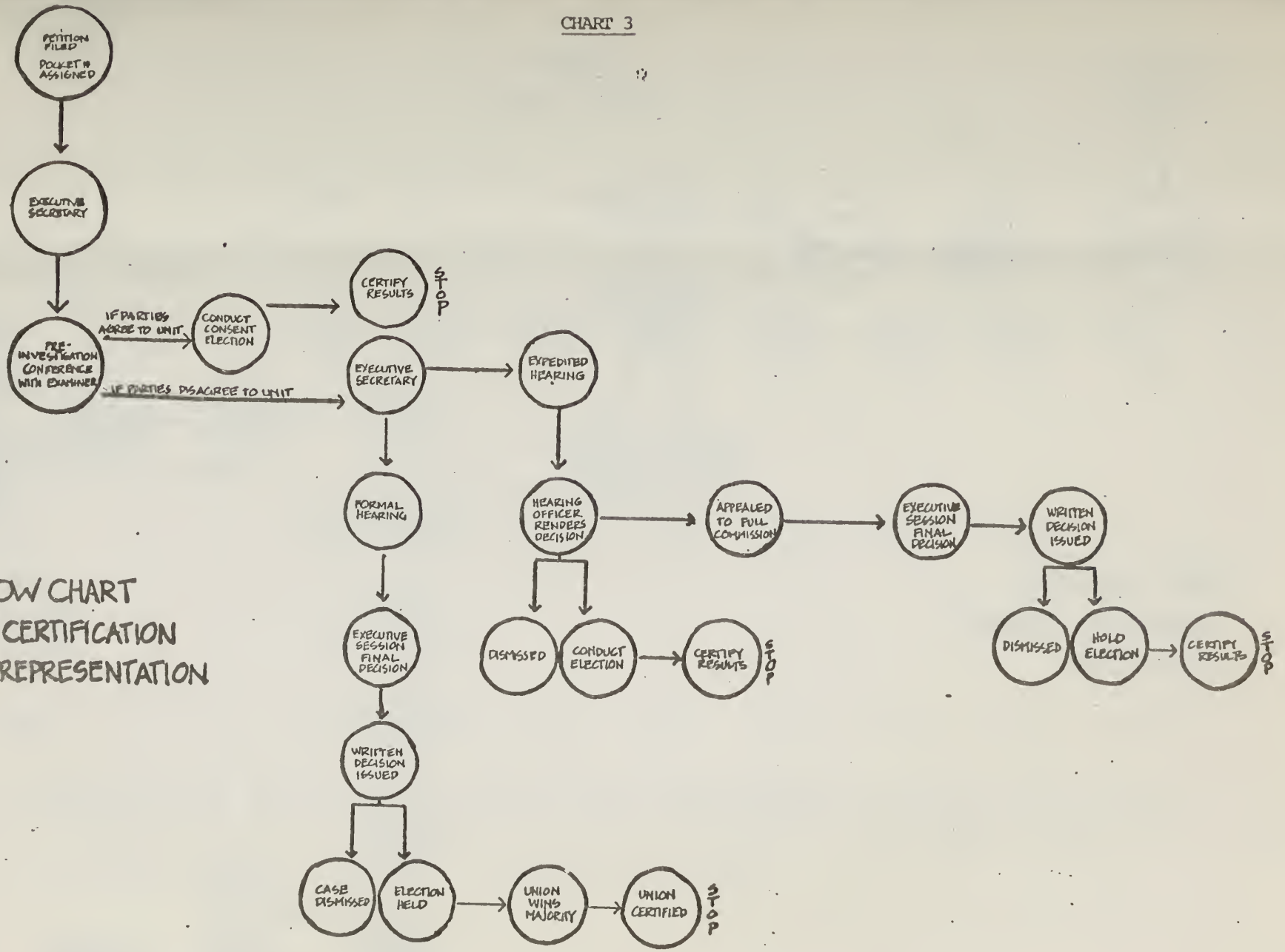
COMMONWEALTH OF MASSACHUSETTS

(Present Structure as of July 18, 1977

LABOR RELATIONS COMMISSION



FLOW CHART OF CERTIFICATION OF REPRESENTATION



FLOW CHART OF PROHIBITED PRACTICE COMPLAINTS

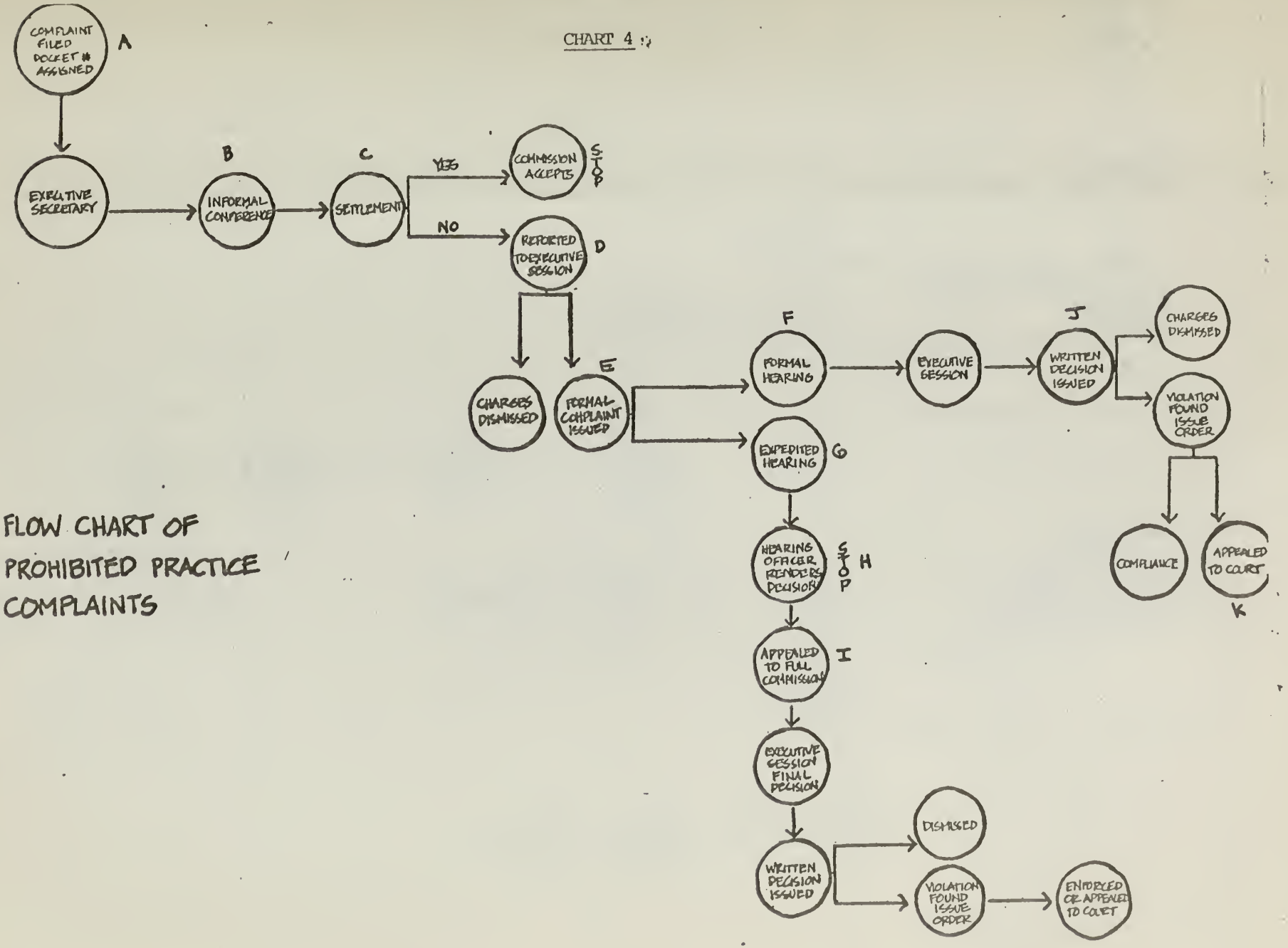


TABLE 1

TOTAL FILINGS

YEAR	77	76	75*	74*	73	72	71	66
Representation Cases								
(TOTAL)	249	304	400	297	287	299	201	144
Public	228	272	379	229	238	245	167	78
Private	21	32	21	68	49	54	34	66
Prohibited Practice Cases								
(TOTAL)	426	390	398	276	277	177	110	
Public	393	350	375	233	244	137	94	
Private	33	40	23	43	33	40	16	
Other**	26	42	17					
GRAND TOTAL	701	736	815	573	564	476	311	144

*Note: A moratorium on the processing of most state representation petitions was declared October 10, 1974-March 3, 1975 and a moratorium for all petitions took place in May-July 1, 1974.

**Strikes investigations and requests for binding arbitration.

TABLE 2

BREAKDOWN OF TOTAL FILINGS

CODE	MEANING	77	76
MCR:	Petition by or on behalf of Municipal Employees seeking certification or decertification of an Employee Organization.	156	194
CR:	Petition by or on behalf of Private Employees seeking certification or decertification of an Employee Organization.	21	32
SCR:	Petition by or on behalf of Employees of the Commonwealth seeking certification or decertification of an Employee Organization.	10	10
MCRE:	Municipal Employer seeks to resolve claim of representation by one or more Employee Organizations.		1
CAS:	Employee Organization or Employer seeks clarification or amendment of recognized or certified bargaining unit.	62	64
MUP:	Complaint filed by employee organization against Municipal Employer.	256	257
UP:	Complaint filed by employee organization against Private Employer.	32	32
MUPL:	Complaint filed by Municipal Employer or an individual against employee organization.	78	48
UPL:	Complaint filed by Private Employer against employee organization.	1	8
SUP:	Complaint filed by employee organization against the Commonwealth.	44	31
SUPL:	Complaint filed by the Commonwealth against an employee organization.	15	14
SI:	Petition filed by Employer requesting the Commission to investigate strike or strike threat by employees.	18	24
RBA:	Employer or employee organization requests the Commission to order Binding Arbitration.	8	17
TOTAL		701	732

TABLE 3

ELECTIONS

	FY 77	FY 76	FY 75	FY 74*	FY 73	FY 72	FY 71	FY 66
Total Elections	173	185	180	169	233	188	122	70

TABLE 4

TOTAL HEARINGS

	FY 77	FY 76	% Increase
Formal	114	96	+16%
Expedited	293	208	+29%
Informal	648	642	+ 1%
Other	35	27	+23%
Grand Total	1,090	973	+ 4%

TABLE 5

SUMMARY OF SECTION 9A PETITIONS
FOR FISCAL 1977

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 32 7/1/76	City of Somerville	Somerville Municipal Employees Association	yes	-Commission order to cease strike and to factfinding led to settlement
SI 33 7/8/76	City of Chelsea	International Brotherhood of Teamsters, Local 380	yes	-Commission order to cease striking and commenc bargaining; compliance and settlement
SI 34 9/13/76	Worcester School Committee	Worcester Public School Custodians Association	yes	-Commission order to cease and desist -settlement
SI 35 9/15/76	Taunton Municipal Lighting Plant Commission	Utility Workers Union of America, Local 68	no	-no strike found -factfinding recommended
SI 36 9/23/76	Town of Walpole	Walpole Municipal Employees Association, Local 1957	overtime withheld	-settled in early stages at Commission
SI 37 9/28/76	City of Beverly	AFSCME, Council 41, Local 111	yes	-Commission order to cease strike and resume negotiations
SI 38 10/6/76	Boston School Committee	Boston Teachers Union	no	-settled in early stages at Commission

TABLE 5 (continued)

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 39 10/18/76	Town of Yarmouth	Yarmouth Permanent Fire-fighters Association	no	(wouldn't perform certain duties) -Commission order to perform duties; compliance
SI 40 10/26/76	City of Beverly	Beverly Police Benevolent Association	overtime withheld	-no strike found
SI 41	Wilbraham School Committee	Wilbraham Education Association	whether there was a work stoppage is the issue to be determined by Commission	-remains pending before Commission
SI 42 11/12/76	Town of Arlington	AFSCME, Local 680	emergency overtime withheld	-strike found -compliance with Commission
SI 43 12/3/76	Town of Medford	Local 492, Building and Service Employees International Union (public works)	emergency overtime withheld	-Commission order to cease and desist -restraining order -compliance
SI 44 12/7/76	Town of Leominster	NAGE, Local RI-252 (public works)	emergency overtime withheld	-settled in initial stages at Commission
SI 45	Town of Winchester	Winchester Town Employees Association, Local 285	emergency overtime withheld	-Commission order to cease and desist and to mediation -compliance

TABLE 5 (continued)

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 46 12/15/76	Town of Walpole	AFSCME, Local 1957	emergency over-time withheld	-Commission order to cease and desist and seek mediation -temporary restraining order obtained
SI 47 4/7/77	Trustees of State Colleges	Boston State College Faculty Federation, AFT, Local 1943, AFL-CIO	no	-settled
SI 48 4/21/77	Bellingham School Committee	Local 747, AFSCME, Council 93	yes	-ordered mediation
SI 49 4/26/77	City of Lynn	AFSCME, Local 193	no	-dismissed
SI 50 5/5/77	City of New Bedford	New Bedford Branch of Police Association	yes	-ordered to cease and desist
SI 51 5/16/77	Lawrence School Committee	Clerical Employees Assoc. of the Lawrence School Dept.	yes	-ordered to mediate

TABLE 6

CASES DISPOSED OF

	FY 77	FY 76
Total Cases Filed	701	736
Backlog from Previous Year	+390	+107
Subtotal	1,091	843
Cases Pending 6/30/77	-476	-390
Total Cases Disposed of This Year	615	453

TABLE 7

STATUS OF OPEN CASES

Completed Expedited Hearing, and Awaiting Decision	53
Hearing Officer's Decision Appealed to full Commission	20
Formal Hearing and Transcript Completed, Awaiting Decision	37
Formal Hearing Scheduled	112
Under Investigation	181
Election Scheduled	18
Representation Cases Under Investigation	42
Requests for Binding Arbitration	13

TABLE 8

AVERAGE ATTORNEY TIME SPENT PER CASE*

TIME SPENT	PROHIBITED PRACTICE	REPRESENTATION
Preparing for Informal Conference	65 min.	36 min.
In Informal Conference	76 min.	100 min.
After Informal, including Preparation for Executive Session	78 min.	38 min.
Writing a Complaint	90 min.	--
Preparing for Expedited Hearing	96 min.	53 min.
Preparing for a Formal Hearing	113 min.	--
Time in Expedited Hearing	6 hrs.	6 hrs.
Time in Formal Hearing	6 hrs.	--
Listening to Tapes of Expedited Hearings	6.5 hrs.	2.5 hrs.
Reading Transcripts of Formal Hearings	5.5 hrs.	--
Researching	7-8 hrs.	7-8 hrs.
Discussing	2.5 hrs.	2.5 hrs.
Writing Decision	17 hrs.	11 hrs.
Preparing Facts of Hearing Officer's Decision for full Commission	1 hr.	1 hr.
TOTAL	61 hrs.	35 hrs.

*These averages were reached by surveying the staff.

ANNUAL REPORT

1978

Massachusetts Labor Relations Commission

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
1604 LEVERETT SALTONSTALL BUILDING
100 CAMBRIDGE STREET, BOSTON 02202

Michael S. Dukakis
Governor

James S. Cooper
Chairman
Garry J. Wooters
Commissioner
Joan G. Dolan
Commissioner

Ann DaDalt
Executive Secretary

TO:

The Honorable Paul Guzzi
Secretary of the Commonwealth
Boston, Massachusetts

Sir:

We are pleased to submit to you the report of the Massachusetts Labor Relations Commission for fiscal year ending June 30, 1978, in compliance with the provisions of Section 32 of Chapter 30 of the General Laws, and Section 9-0(c) of Chapter 23 of the General Laws, as amended.

LABOR RELATIONS COMMISSION

JAMES S. COOPER, CHAIRMAN

GARRY J. WOOTERS, COMMISSIONER

JOAN G. DOLAN, COMMISSIONER

PUBLICATION: # 10,936-57-50-10-78-CR
APPROVED by Alfred C. Holland, State Purchasing Agent

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I. THE PURPOSE OF THE ANNUAL REPORT

The Labor Relations Commission (the Commission) administers the Public Employee Bargaining Law, Chapter 150E, and the "Baby Wagner Act," Chapter 150A of the General Laws. These laws give employees of state and local government, and employees of private businesses which conduct only intra-state transactions, the right to organize and bargain collectively with their employers.

The Commission conducts elections for collective bargaining representatives, and certifies the results; holds hearings and issues decisions on unfair, or prohibited, labor practice charges; investigates strikes; and considers requests for binding arbitration.

Although the Commission has been in existence since 1937 to administer Chapter 150A, its jurisdiction was greatly expanded in 1964, 1975, and 1973, when the legislature granted collective bargaining rights to municipal, county and state employees respectively. (See Table 1: "How Did Public Employees Bargaining Evolve?")

The purpose of this report is: to explain how the Commission functions; to report important decisions issued this year; and to provide information concerning the agency's workload and productivity.

II. MAJOR ACCOMPLISHMENTS OF THE YEAR

1. Decisions and Orders

A list of the Commission's major Decisions and Orders of the past year appear in Appendix A.

2. New Representation Petition Procedures

New procedures for handling representation petitions have reduced the time from the day a petition is filed, to the day an election is held by one half.

3. Major Elections

Appendix B contains a list of the Commission's major elections in the past fiscal year.

4. Increased Productivity

The number of Decisions issued this year has increased 25 percent. This indicates that the productivity of the Commission has increased, and that cases are being disposed of more rapidly.

III. STRUCTURE OF THE COMMISSION

The Commission is composed of three members, appointed by the Governor, who serve five year terms. One commissioner is designated to act as Chairman. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law.

The Executive Secretary supervises employees under the direction of the Commission; prepares agendas for executive session; keeps the Commission informed of all matters pending; and maintains a permanent record of the disposition of any matter discussed and/or voted upon at the executive session. There is also an assistant executive secretary.

A staff of attorneys acts as agents of the Commission to: prosecute any inquiry necessary to the performance of its functions; appear for and represent the Commission in any case in court; and to conduct hearings.

Labor Relations Examiners also act as Commission agents to conduct investigations and elections.

The head clerk attends to bookkeeping and administrative matters. Stenographers report formal hearings. Secretaries type decisions, prepare election material, send out notices and perform other clerical and administrative tasks. (See Table 2.)

1. Commissioners and Executive Secretary

James S. Cooper has served as Chairman since October 1975. Previously he was an attorney for the Boston law firm of Holtz and Drachman, the Massachusetts Commission Against Discrimination, and the New Jersey Division of Civil Rights. He is a graduate of Rutgers University Law School, where he served as a clinical instructor the year following his graduation.

Garry J. Wooters was appointed to the Commission in November 1976, to replace Henry C. Alarie, who retired. Commissioner Wooters has previously served as counsel to the Commission, as a field attorney for the National Labor Relations Board, and as counsel to the National Association of Government Employees. He is a graduate of Boston University Law School.

Joan G. Dolan was appointed as a Commissioner on July 18, 1977. She replaced Madeline H. Miceli, who retired in January. Dolan was previously an attorney for the Massachusetts Teachers Association, and is a graduate of Northeastern University Law School.

Ann Da Dalt assumed her duties as Executive Secretary when Alfonzo D'Apuzzo retired. She had previously served as assistant executive secretary.

2. The Staff

Rita Alberti, secretary, has returned to the Commission, where she previously worked for over 20 years, after a year at the Department of Elder Affairs...Bill Blanning, public information officer, joined the Commission in February. He graduated from Yale in 1976 and does freelance writing...Cathy Burke, secretary, is a graduate of Chandler School for Women and joined the Commission in June...Frederick V. "Fritz" Casselman, is a graduate of Boston University Law School, Patty A. Ciampa, is the Commission's bookkeeper. She is a graduate of Julie Billiart High School in Boston and Burdett College...Shirley DeMarco is the Commission's election specialist and graduated from Fitten Central High School in East Boston...Diane Drapeau joined the Commission last September and is a graduate of Suffolk University Law School...Jean Driscoll is a graduate of Boston College Law School and joined the Commission last September...Philip J. Dunn came to the Commission in September 1976 from Gregory, Von Lopik, and Higle, a labor law firm in Michigan, and is a graduate of Northeastern University Law School...Sharon Henderson Ellis, a graduate of Suffolk University Law School, joined the Commission September 1976. Prior to law school, she served in the Peace Corps in Tunisia...David F. Grunebaum came to the Commission September 1976 after receiving a Masters in Labor Law from New York University. He was previously in private law practice in Boston, and served as a Vista volunteer. He is a graduate of Boston University Law School...Alice T. Hintsa, hearing stenographer, first came to the Commission in 1956. She took time off in between, however, to teach evenings at the Stenotype Institute and to do some freelance reporting...Stuart A. Kaufman came to the Commission in March 1976, after serving as legal counsel to the legislature's Committee on Public Service. He is a graduate of Boston College Law School, and directs a community band in Brookline...James M. Litton is a graduate of New York University Law School. He was counsel to the International Ladies Garment Workers Union in New York before coming to the Commission in June 1976...Priscilla Lyons is the assistant to the executive secretary and a graduate of Boston College Law School...Ralph Lyons, hearing stenographer, came to the Commission seven years ago after a 14 year career in the railroad industry. He now teaches two nights a week at Touch Shorthand Academy, and has a black belt in judo...Robert B. McCormack, a graduate of Boston University Law School, has been at the Commission since 1972. Prior to that, he was defense counsel for the AMICA Insurance Company, and was in private practice in Hingham...John L. McLaughlin, labor relations examiner, has been with the Commission 12 years. A graduate of Boston College, he was previously with the National Labor Relations Board...Norener Reid, hearing stenographer, is a graduate of Boston Business School and Touch Shorthand Academy...Dale Smith, is a graduate of Northwest High School in St. Louis, Missouri and joined the Commission last November. Ourania "Nea" Trypousis, secretary, is a student at Suffolk University, majoring in business education. She works part-time at the Commission between her studies...Arthur S. Weber, head clerk, is a retired

senior examiner with the Postal Inspection Service. He has worked for the Town of Braintree, the First National Bank, and the State Police since his retirement...Judith A. Wong is a graduate of Boston University Law School and joined the Commission last October. She had previously worked at the Massachusetts Commission Against Discrimination. She also holds the esteemed position of office softball coach...Jackie Young, is a candidate for a Ph.D. degree in labor relations from Rutgers University and joined the Commission last May. She previously worked as an organizer for several unions and has taught labor relations at the university level...Janice Zimmermann, secretary, is a graduate of Medford High School and joined the Commission last January. She is expecting her first child in October.

IV. CASELOAD AND PRODUCTIVITY

The following is a detailed description of how the Commission performs its four basic functions.

1. Representation Cases

When employees or a union file a petition requesting the Commission to conduct an election for a collective bargaining representative, the Commission must determine the appropriate bargaining unit. This requires a finding as to which employees share a "community of interest" at the bargaining table. Sometimes the employer and the union consent to an appropriate unit, and the Commission approves it. But if they cannot agree, or if they propose an inappropriate unit, the Commission conducts hearings to make a determination. After the unit is defined, the Commission conducts a secret ballot election, and certifies the results. (See chart 3.) A special subset of representation petitions is "clarification petitions," filed by the employee organization or the employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

2. Unfair Labor Practices

There are employment practices prohibited under Chapter 150E § 10(a) and (b), Chapter 150A § 4(a) and (b), which the employer and the employee organization are prohibited from performing. If the employer, or employee organization believes that an employee, employer or employee organization has performed a prohibited practice, they can file an unfair labor practice charge (prohibited practice charge) with the Commission (Chart 4, Step A). The Commission conducts an informal conference when such a charge is filed, (step B), at which a Commission agent obtains statements from both parties and attempts to bring about a settlement (step C). The agent reports the results of the conference to the Commission (step D). If a settlement is not reached and the Commission finds that there is sufficient evidence to the charge to

warrant a hearing, a complaint is issued (step E), and a formal (step F) or expedited (step G) hearing is held. A hearing officer or Commissioner presides at the hearings. During the hearings, witnesses are called and evidence is introduced. After an expedited hearing, the hearing officer issues a decision (step H), which is appealable to the full Commission (step I). Subsequent to a formal hearing, the Commission issues a decision (step J), which is appealable only to the courts (step K).

3. Strikes

Under Chapter 150E, public employees are prohibited from striking. Thus, when employees engage in or threaten to engage in a strike, the employer may petition the Commission to investigate. The Commission requires that representatives of the employer and employee organization appear for a formal investigation. The Commission "sets requirements that must be complied with." Such an investigation is given highest priority at the Commission.

4. Request for Binding Arbitration

If an employer and an employee organization enter a written contract which does not provide a grievance clause culminating in final and binding arbitration, to be invoked in the event of any dispute concerning the interpretation or application of such written agreement, the Commission may order such arbitration upon the request of either party.

A. Caseload

Between 1966 and 1973, the Commission's caseload grew over 300 percent; since the passage of Chapter 150E in 1973, when state employees were granted collective bargaining rights, the caseload has grown an additional 20 percent.

Table 1 indicates these increases. Table 2 shows the total filings of different types of cases during the past fiscal year. The Commission's case code is explained in the table. Table 3 indicates the number of elections which the Commission conducted this past year. This number does not reflect the size of the elections, some of which require the attendance of a majority of the staff. Table 3 also indicates the total number of Hearing Officer and Commission Decisions issued. Table 4 shows the number of hearings held with a breakdown of the types of hearings; formal, expedited, informal conferences, and other. (Other includes strike investigations, hearings on challenged ballots, objections to an election, etc.). Table 5 details the number of strike investigations, the number of actual work stoppages, and the Commission's role in settling the disputes.

The following testimony presented by Chairman Cooper before the Public Service Committee of the General Court, explains the

Commission's role during strike investigations:

> "The Commission's focus on strikes has been to get the underlying dispute settled as quickly as possible. We do not view our role as being merely a club to be used by employers to get their employees back to work. We will always order employees back to their jobs; but, we will also look further into the causes of the strike and attempt to get the parties back together and resolve the problem... Of the 47 strike petitions, we have settled either at our offices or after an Order, 31 cases. This represents approximately 65 percent of all the petitions filed. We are proud of this work."

> "We regard our role in the Superior Court to be somewhat different than acting as the agent of the employer. The Commission appears before the Court seeking enforcement of its Order. We attempt to guide the Court in deciding what action should be taken. We do not 'represent' the employer, we represent the Commission in serving in the public interest. Thus we define our role as being an aid to the Court in bringing an end to the dispute. We seek to represent a neutral position before the Court, but we always seek to have the Court enjoin the work stoppage."

B. Productivity

The best way to illustrate each attorney's workload is to multiply the number of hours spent on an average case, 50 (table 8), by the total number of cases which reached decisions, 152. (152 x 50 = 7,600 person hours) 7,600 person hours is over 50% of available attorney ime (8 attorneys x 35 hours per week x 50 weeks = 14,000). Immeasurable amounts of time are also spent in disposing of additional cases by dismissal, settlement or some other means; on court cases; officer of the day work; executive sessions; and other duties. In order to perform all of these duties, attorneys are working well in excess of a regular work week.

V. COURT APPEARANCES

Parties to Commission decisions have the right under Chapter 30A § 14 to appeal those decisions within 30 days to the Superior Court. Less than 8% of Commission decisions are appealed, and the majority of those are affirmed by the Courts. Yet, court cases consume a considerable amount of Commission time. Writing a brief can take a week, as can researching a case. Time in court takes anywhere from a few hours to a week; and at least another day can be spent preparing oral arguments and attending to miscellaneous details.

VI. ADDITIONAL FUNCTIONS

1. Public Information and Community Relations

The Commission believes that an informed and educated public contributes to the maintenance of stable labor relations. The more knowledgeable employees and employers are of the law, the better they will be able to abide by it, and take advantage of their rights under it. The Commission therefore makes every effort to provide information to the public and to meet with groups of employers and employees.

Our public information officer provides a link from the Commission to the media and the general public. The public information officer answers questions from the press concerning the status of various cases before the Commission and issues press releases when the Commission renders important decisions. The information officer is also responsible for the bi-monthly MLRC News which provides information about the day-to-day functioning of the Commission for labor relations professionals, including labor and management representatives. Each issue contains articles highlighting some of the Commission's more interesting cases; analysis of some aspect of Massachusetts General Laws Chapter 150E or 150A, or outside "Section 4"; information about people at the Commission; legislative updates; and statistics on the Commission's caseload. MLRC News is provided free of charge. Nearly 400 labor professionals including those from other states and Canada receive the News by mail.

Each day an attorney or examiner is assigned to aid the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve such problems, the "officer of the day" offers advice on where to seek assistance. The Commission established the officer of the day position last year, because it has an obligation to assist the large number of people who do not understand the maze of administrative agencies regulating the employer-employee relationship.

The Commission supplies information to three local professional publications in order to keep practitioners in the field of public sector labor relations informed. The Massachusetts Labor Relations Reporter publishes information concerning decisions, court cases, hearing elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commissions decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in the Government Employee Relations Report, the Bureau of National Affairs Labor Relations Reference Manual, and the Commerce Clearing House Labor Cases.

The Commission actively participates in the Boston Bar Association's Workshop for Labor Relations Practitioners. Commissioners or staff members have spoken at the Massachusetts Fire Chiefs Conference, the New England Public Employers Association, the Association of Massachusetts Town Counsels and City Solicitors, and the Institute of Industrial Relations at Holy Cross College.

Commission agents travel across the state in an effort to make its services more accessible. Most elections are conducted at the place of employment by the Commission agent. Commission agents also travel periodically to the western part of the state to conduct informal, formal, expedited hearings.

2. Union Registration and Union Contract File

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations, and the bargaining units they represent. Required information includes: the name and address of current officers; an address where notices can be sent; date of organization; date of certification; and the expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: "the aims and objectives of such organization, the scale of dues, initiation fee, fines and assessments to be charged to the members, and the annual salaries to be paid officers." This information is reported on standardized forms, which are available to the public.

Public employers are required to file copies of all collective bargaining agreements with the Commission.

FINANCIAL STATMENT - FISCAL YEAR 1978

July 1, 1977 - June 30, 1978

Received from General Appropriation.....		$ 490,000.00
Expenditures		
Salaries	$ 426,217.14	
Special Services	7,564.26	
Supplies	29,396.07	
Travel	4,449.50	
Other Services & Expenses	21,272.09	
		$ 488,899.06
Balance Unexpended returned to State Treasury		$ 1,100.94
Income from Sale of Stenographic Records		$ 4,639.75

FINANCIAL STATEMENT - FISCAL YEAR 1977
July 1, 1976 - June 30, 1977

Received from General Appropriation.....		$449,800.00
Expenditures		
Salaries	$367,250.00	
Special Services	10,635.00	
Supplies	30,500.00	
Travel	4,800.00	
Other Services & Expenses	27,964.00	
Total	$441,149.00	$441,149.00
Balance Unexpended Returned to State Treasury	$ 8,651.00	$ 8,651.00
Income from Sale of Stenographic Records	$ 4,720.00	$ 4,720.00

July 1, 1977 - June 30, 1978

PERSONAL SERVICES

Salaries as of June 30, 1978

James S. Cooper	Chairman	$ 24,846.48
Garry J. Wooters	Member, Labor Relations Commission	22,796.52
Joan G. Dolan	Member, Labor Relations Commission	22,796.52
Ann DaDalt	Executive Secretary	18,884.32
Robert B. McCormack	Counsel II	22,514.96
James M. Litton	Counsel II	20,228.00
David F. Grunebaum	Counsel II	19,465.68
Frederick V. Casselman	Counsel II	18,703.36
Stuart A. Kaufman	Counsel II	19,465.68
Philip Dunn	Counsel I	16,072.68
Sharon H. Ellis	Counsel I	16,072.68
Jean S. Driscoll	Labor Relations Examiner	14,646.84
John L. McLaughlin	Labor Relations Examiner	18,228.60
Judith A. Wong	Sr. Employee Relations Examiner	15,840.76
Jacqueline A. Young	Labor Relations Examiner	14,646.84
Priscilla A. Lyons	Asst. to Executive Secretary	13,130.52
Ralph Lyons	Hearings Stenographer	14,345.24
Norener K. Reid	Hearings Stenographer	13,050.44
Alice T. Hintsa	Hearings Stenographer	14,345.24
Rita Alberti	Confidential Secretary	11,755.64
Diane M. Drapeau	Election Specialist	11,755.64
Shirley DeMarco	Election Specialist	11,755.64
Arthur S. Weber	Head Clerk	10,627.24
Catherine M. Burke	Principal Clerk	9,118.20
Dale E. Smith	Principal Clerk	9,118.20
Janice Zimmermann	Sr. Clerk & Stenographer	8,437.00
Ourania Trypousis	Sr. Clerk & Stenographer	8,437.00
Patricia A. Ciampa	Senior Bookkeeper	8,920.60
William A. Blanning	Sr. Clerk & Stenographer	8,437.00
Suzanne F. Sheats	Jr. Clerk & Stenographer	7,654.40
		446,097.92

Vacant Positions		
Sr. Employee Relations Examiner	$14,647.00	
Sr. Clerk & Stenographer	8,437.00	
Sr. Clerk & Typist	8,159.00	
Sr. Clerk & Typist	8,159.00	39,402.00
		485,499.92

July 1, 1976 - June 30, 1977

PERSONAL SERVICES

Salaries as of June 30, 1977

James S. Cooper	Chairman	$ 23,850.20
Garry J. Wooters	Commissioner	21,850.20
Rita Alberti	Principal Clerk	10,153.00
Frederick V. Casselman	Counsel II	17,113.20
Patricia Ciampa	Sr. Clerk and Typist	7,729.80
Ethel Conrad	Sr. Clerk and Stenographer	7,787.00
Ann Da Dalt	Labor Realtions Examiner	14,482.00
Mary DiBlasio	Sr. Clerk and Stenographer	7,787.00
Philip J. Dunn	Sr. Employee Relations Examiner	13,899.60
Sharon H. Ellis	Labor Relations Examiner	13,899.60
David F. Grunebaum	Counsel II	17,856.80
Alice T. Hintsa	Hearings Stenographer	13,605.80
Stuart A. Kaufman	Counsel II	17,856.80
Sharon Kinney	Jr. Clerk and Stenographer	7,004.40
Mary J. Lally	Labor Relations Examiner	17,394.00
Jean Lewis	Sr. Clerk and Stenographer	8,512.40
James M. Litton	Counsel II	18,600.40
[illegible]h Lyons	Hearings Stenographer	13,605.80
[illegible]ert McCormack	Counsel II	20,831.20
John L. McLaughlin	Labor Relations Examiner	17,394.00
Ezaura P. Palys	Principal Clerk	9,591.40
Norener Reid	Hearings Stenographer	11,921.00
Harvey M. Shrage	Asst. to Executive Secretary	12,420.20
Ourania Trypousis	Sr. Clerk and Stenographer	7,787.00
Maria Walsh	Sr. Bookkeeper	7,787.00
Arthur S. Weber	Head Clerk	9,635.60
Karen Zweig	Sr. Employee Relations Examiner	13,899.60
		$273,442.20

Vacant Positions		
Executive Secretary	$18,033.60	
Administrative Secretary	11,078.60	
Commissioner	21,850.20	
	$50,962.40	$ 50,962.40
		$324,404.60

Preface: Jurisdiction

The Massachusetts Labor Relations Commission (Commission) was created in 1937 when the General Court enacted the "Baby Wagner Act", St. 1937, c.436. This statute appears as G.L.c.150A and covers all employers except the Commonwealth or any political subdivision thereof. The Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. §141 et. seq., covers employers engaged in interstate commerce and preempts the Commission's exercise of jurisdiction, Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957); Foley, Hoag & Eliot, 2 MLC 1302 (1976); Foley, Hoag & Eliot, 229 NLRB No. 80 (1977), 95 LRRM 1041. The National Labor Relations Board (Board) declines to exercise its jurisdiction in a relatively narrow area and is prohibited by law from reducing its jurisdictional standards below those standards in effect on August 1, 1959. 29 U.S.C. §164(c)(1). Recent amendments to the LMRA have expanded the Board's jurisdiction to include health care institutions. P.L. 93-360 (1974). Under the LMRA the Board does not have jurisdiction over any state or any political subdivision thereof. 29 U.S.C. §152(2).

In 1964 and 1965 the General Court enacted laws granting certain bargaining rights to state and municipal employees. St. 1964, c.637; St. 1965, c.763. In 1973, the General Court repealed the public sector collective bargaining statutes and enacted a comprehensive bargaining law applicable to all public employees. St. 1973, c.1078. The new statute appears as G.L.c.150E. (hereinafter referred to as "the Law").

One of the more confusing questions of jurisdiction concerns bus drivers.The Board policy is to decline jurisdiction over that part of a transportation enterprise engaged in transporting school children for any political subdivision of a state, and the Commission will assert jurisdiction in those cases. Hudson Bus Lines, 4 MLC 1630 (1977); Lexington Taxi Corp., 3 MLC 1696 (1977); William S. Carroll, Inc., 3 MLC 1627 (H.O., 1977);*cf. Mitrano Chevrolet-Main Street Garage, 2 MLC 1533 (1976).

I. Definitions

A. Employer

The term "employer" or "public employer" is defined as the Commonwealth acting through the commissioner of administration, or any county, city, town or a district acting through its chief executive officer. The term "employer" also includes "any individual who is designated to represent one of these employers and acts in its interest in dealing with public employees". One of the troublesome areas of applying this definition concerns county government. In one case, County of Hampden and Sheriff of the County of Hampden, 3 MLC 1076 (H.O., 1976), a hearing officer found that the employer of employees of the sheriff's office was the county, but that the chief executive officer under the Law was the sheriff and the county

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* "H.O." denotes decisions issued by a duly designated hearing officer of the Commission; other citations are to decisions of the full Commission. Both Commission and hearing officer decisions are reported in Massachusetts Labor Cases, (MLC) which is published by the Massachusetts Labor Relations Reporter, P.O. Box 48, Boston, Massachusetts, Ma. 02101. Copies of decisions may be ordered directly from the publisher.

commissioners in a joint capacity. In reaching this conclusion, the hearing officer examined the difficulties in bargaining with the county commissioners or the sheriff individually; the problems in the appropriation process; and the possible consequences in unfair labor practice cases. Although County of Hampden, involved a representation case, another hearing officer found joint chief executive officers in the Essex County Commission and the Board of Trustees of its Agricultural and Technical Institute. County of Essex, 4 MLC 1230 (H.O., 1977). However, on the municipal level see the Supreme Judicial Court's opinion with respect to joint chief executives in Labor Relations Commission v. Town of Natick, Mass. Adv. Sh. (1976) 31, 339 N.E. 2d 900. Recent amendments to the Law have included the Chief Justice, Supreme Judicial Court employees (c.278, Acts of 1977), housing authority employees (c.610, Acts of 1977), and employees of the State Lottery Commission (c.937, Acts of 1977). In addition, chapter 760 of the Acts of 1962 applies certain provisions of chapter 150A to the Massachusetts Port Authority, the Massachusetts Parking Authority, the Massachusetts Turnpike Authority, and the Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority. Redevelopment authorities are not within the jurisdiction of the Commission, Fall River Redevelopment Authority, 4 MLC 1690 (1978). A Commission hearing officer has found a water pollution abatement district to be a public employer under the Law. Upper Blackstone Water Pollution Abatement District, 4 MLC 1156 (H.O. 1977).

B. Employee

The term "employee" has been broadly interpreted to encompass all individuals employed by a public employer, except those specifically excluded by the Law. City of Fitchburg, 2 MLC 1123 (1975). Thus, coverage of the Law extends to regularly employed part-time employees, Pittsfield School Committee, 2 MLC 1271 (1976); County of Plymouth, 2 MLC 1106 (1975), including part-timers who are full-time students, Quincy Library Department, 3 MLC 1517 (1977). Probationary employees are entitled to protection under the Law, as are CETA employees. City of Springfield, 2 MLC 1233 (1975); City of Fitchburg, 2 MLC 1123 (1975). The Commission has also determined that hospital interns, residents, and fellows are employees, despite contrary Board rulings. City of Cambridge, 2 MLC 1450 (1976); Worcester City Hospital, 3 MLC 1290 (H.O., 1976) aff'd 4 MLC 1373 (1977). However, employees of a private bus company which has contracted with a city to bus school children are not considered public employees, Hudson Bus Lines, 4 MLC 1630 (1977).

1) Managerial Employees

Under the Law, employees shall be designated as managerial employees excluded from coverage only if they (a) participate to a substantial degree in formulating or determining policy, (b) assist to a substantial degree in the preparation for or conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

A position must be funded and filled before the issue of managerial exclusion may be raised. Town of Wellesley, 2 MLC 1443 (1976). The Commission scrutinizes employees' actual duties and responsibilities, without respect to those which may be performed in the future. County of Worcester, 2 MLC 1273 (1976). Its analysis is functional, rather than merely looking to titles, Masconomet Regional School District, 2 MLC 1034 (1976); Wellesley School Committee, 1 MLC 1389 (1975). In order for employees to be excluded as "managerial", their participation in any one of the disjunctive requirements must be substantial, Lee School Committee, 3 MLC

1496 (1977); Taunton School Committee, 1 MLC 1480 (1975); Town of Dedham, 4 MLC 1347 (H.O., 1977).

Exercise of supervisory authority, without more, does not make an individual "managerial" within the meaning of the Law. Worcester School Committee, 3 MLC 1653 (1977); University of Massachusetts, 3 MLC 1179 (1976). For example, evaluation of subordinates which is subject to review and approval and which has limited impact upon personnel decisions is insufficient to exclude an employee as "managerial". Masconomet Regional School District, 3 MLC 1034 (1976). New Bedford School Committee, 2 MLC 1215 (1975); Framingham School Committee, 4 MLC 1298 (H.O., 1977).

A managerial employee's role in formulating policy must be more than advisory and must have a significant impact upon a considerable part of the public enterprise. Contrast Masconomet Regional School District, supra with Wellesley School Committee, supra; Worcester School Committee, 3 MLC 1653 (1977); Needham School Committee, 3 MLC 1251 (1976); Town of Carlisle, 4 MLC 1538 (H.O., 1977); Worcester Vocational School Department, 4 MLC 1277 (H.O., 1977); City of Northampton, 4 MLC 1352 (H.O., 1977). Where the personnel in question act merely as policy conduits from whom suggestions are sometimes elicited, there is no managerial exclusion. Holyoke School Committee, 4 MLC 1607 (1977).

Administrators who have never exercised appellate responsibility in the grievance process and have only participated on isolated occasions in collective bargaining are not managerial employees. Wellesley School Committee, 1 MLC 1389 (1975). Moreover, administrators who review contract proposals concerning the teachers' unit to prevent a possible adverse impact on their own employment do not substantially participate in collective bargaining. Town of Holbrook, 1 MLC 1468 (1975).

2) Confidential Employees

Confidential employees are excluded from coverage under the Law. The Commission applies the confidential exclusion narrowly and balances the broad extension of collective bargaining rights against the potential danger of disrupting the employer's operations. Silver Lake Regional School Committee, 1 MLC 1240 (1975); Stoneham School Committee, 3 MLC 1390 (H.O., 1977).

Employees are confidential "only if they directly assist and act in a confidential capacity" to a person excluded from the coverage of the Law. An employee must have a continuing and substantial relationship with a managerial employee of such a nature that there is a legitimate expectation of confidentiality in their routine and recurring dealings. Littleton School Committee, 4 MLC 1405 (1977). However, employees may directly assist excluded employees without assisting them in a confidential capacity. University of Massachusetts, 3 MLC 1179 (1976). Thus a managerial employee's reliance upon another employee as a conduit for policy advice and personnel recommendations does not, standing alone, render the latter a "confidential employee". See University of Massachusetts, 3 MLC 1179 (1976). Similarly, access to sensitive material, such as financial data or personnel records, without more, does not necessarily make an employee "confidential". Wellesley School Committee, 1 MLC 1389 (1975); Blackstone-Millville Regional School District, 4 MLC 1312 (H.O., 1977).

In contrast, however, employees who regularly type contract proposals for use by the employer in collective bargaining negotiations have been excluded as "confidential". Silver Lake Regional School Committee, 1 MLC 1240 (1975). Secretaries to school superintendents and school committees have generally been excluded. Belchertown School Committee, 1 MLC 1304 (1975); Fall River School Committee, 3 MLC 1591 (H.O., 1977); Stoneham School Committee, 3 MLC 1390 (H.O., 1977). Secretaries who have regular and substantial exposure to labor relations information and advance knowledge of bargaining positions have been held to be "confidential", Worcester School Committee, 4 MLC 1015 (H.O., 1977).

II. Employee Rights To Organize And Bargain Collectively

Section 2 of the Law provides that "employees shall have the right to self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing". Furthermore, this section gives employees the right "to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion".

A. Protected Activities

Protected activities include: making pro-union speeches, Mount Wachusett Community College, 1 MLC 1496 (1975); seeking the assistance of a union, Commonwealth of Massachusetts, 2 MLC 1400 (1976); soliciting union authorization cards and serving as union steward, Town of Wareham, 3 MLC 1334 (1976); serving as union officer and member of union negotiating committee and protesting the employer's unilateral changes in working conditions, Town of Sharon, 3 MLC 1052 (1976); initiating a grievance under a collective bargaining agreement, Town of Halifax, 1 MLC 1486 (1975); prosecuting a grievance not within the context of a contractual grievance procedure, Harwich School Committee, 2 MLC 1095 (1975); testifying before the Commission, City of Boston, 4 MLC 1033 (1977); distributing leaflets and collecting signatures on a petition as an adjunct to the formal grievance procedure, City of Boston, 4 MLC 1101 (1976); insisting upon the presence of a union representative at an investigatory interview reasonably perceived as potentially leading to discharge. Commonwealth of Massachusetts, 4 MLC 1415 (1977); editing and publishing a union newsletter, Mount Wachusett Community College, 1 MLC 1496 (1975); non-disruptive picketing of school committee meetings, homes and businesses of school committee members, and distribution to parents of leaflets in support of union organizational or bargaining objectives, Southern Worcester County Regional Vocational School District, 2 MLC 1488 (1976); see also City of Fitchburg, 2 MLC 1123 (1975).

B. Unprotected or Illegal Activities

Picketing or leafleting by public employees or an employee organization in support of an unlawful strike is not protected activity. See Commonwealth of Massachusetts, SI-29, (1976); Town of Franklin, SI-56, (1977).

Improper tactics intended to coerce the employer into accepting the union's position, or illegal activities such as acts of vandalism, are not protected activity. See City of Fitchburg, 2 MLC 1123 (1975). Conduct which is physically intimidating, egregious or disruptive of the employer's business is also unprotected. Harwich School Committee, 2 MLC 1095 (1975).

III. Appropriate Bargaining Units

A. Statutory Criteria

The Legislature has mandated that the Commission give consideration to three criteria: community of interest; efficiency of operations and effective dealings; and safeguarding the rights of employees to effective representation. These criteria are balanced to serve the fundamental statutory objective of providing for stable and continuing labor relations.

1) Community of Interest

The "touchstone" of community of interest is a demonstration that the requested employees comprise a coherent, homogeneous group with employee interests sufficiently distinct from those of excluded employees to warrant separate representation. Among the factors to be considered are: common supervision; similar work environment; job requirements; education; training and experience; and job interchange and work contact. Boston School Committee, 2 MLC 1557 (1976); Town of Sterling, 4 MLC 1473 (H.O. 1977).

Community of interest does not, however, require an identity of interest. So long as there is no inherent conflict among consolidated groups of employees, they need only be similarly, not identically, situated. Differences in work locations and supervision need not destroy community of interest. Town of Harwich, 1 MLC 1376 (1975). Thus, the professional faculty of the statewide network of community colleges were placed in one overall unit rather than in individual units at each campus. Community Colleges, 1 MLC 1426 (1975). Nurses with different work schedules have been placed in a single unit. Town of Agawam, 3 MLC 1681 (H.O., 1976). At the University of Massachusetts, department chairmen, part-time faculty, librarians, and coaches were found to share a community of interest with full-time "tenure track" faculty. University of Massachusetts, 3 MLC 1179 (1976). Employees of a parks and recreation department were found to share a community of interest with employees of a public works department. Town of Agawam, 4 MLC 1060 (H.O., 1977).

2) Efficiency of Operations and Effective Dealings

The "efficiency of operations and effective dealings" criterion has evolved into the policy of including employees in the largest practicable bargaining unit. Community Colleges, 1 MLC 1426 (1975); Boston School Committee, 2 MLC 1557 (1976). In assessing a unit's potential effect, the Commission considers the impact on the public employer's performance of its primary mission. Community Colleges, 1 MLC 1426 (1975).

Central to the required analysis is scrutiny of the employer's structure, delivery of services, and fiscal administration. University of Massachusetts, 3 MLC 1179 (1976). Given a finding of community of interest among employees sought in separate units, the Commission has ordered single, larger units coextensive with the employer's administrative structure. Town of Agawam, 3 MLC 1681 (H.O., 1976); Community Colleges, 1 MLC 1426 (1975).

3) Safeguarding Employee Rights to Effective Representation

G.L.c.150E precludes creation of a unit structure which would impair employees' statutory rights. Statement in Support of Adoption of Amendment to Rules and Regulations of the Commission Creating Statewide Occupational Units, 1 MLC

1319 (1975). Thus, the Commission avoids establishing units with a diversity of employment interests so marked as to produce inevitable conflicts in negotiating and administering collective bargaining agreements. University of Massachusetts, Union of Student Employees, 4 MLC 1384 (1977).

As noted above, the Commission considers bargaining history, employee wishes, extent of organization, and the structure and practices of the particular workforce. Critical in safeguarding employee rights to effective representation, however, is the avoidance of units in which conflict is inherent because of an absence of community of interest among the employees. See Statement...Creating Statewide Occupational Units, 1 MLC 1319 (1975).

B. Policy Considerations

1) Commission Discretion

Within certain statutory limits, the Commission has broad discretion determining appropriate bargaining units. University of Massachusetts, 4 MLC 1384 (1977). Exclusions of certain types of employees may be derived from the overriding legislative purpose, see Commonwealth of Massachusetts, SCRX-2 (1973). Where the union's petition describes an appropriate unit, the Commission will not reject that unit because it is not the only appropriate unit, or because there is an alternative unit that is more appropriate. Town of Agawam, 4MLC 1060 (H.O., 1977); Lynn Hospital, 1 MLC 1046 (1974).

2) Policy Favoring Broad, Comprehensive Units

The Commission has continually affirmed its policy that broad, comprehensive units, rather than small, fragmented units, best facilitate stable and continuing labor relations. Generally, the largest unit sought will be found to be an appropriate unit, provided there is sufficient community of interest among the petitioned-for employees. Pittsfield School Committee, 3 MLC 1490 (1977); University of Massachusetts, 3 MLC 1179 (1976); City of Quincy, 3 MLC 1012 (1976); Community Colleges, 1 MLC 1426 (1975); Town of Sterling, 4 MLC 1473 (H.O., 1977).

In keeping with the principle of the desirability of large units, the proliferation of small units has not been encouraged. The Commission has refused to approve the creation of small separate units where there are existing units whose members share a community of interest with employees seeking a separate unit. Quincy Library Department, 3 MLC 1517 (1977); Pittsfield School Committee, 3 MLC 1493 (1977); City of Lowell, 3 MLC 1261 (1976); Barnstable County, 3 MLC 1144 (1976). Where there is the requisite community of interest, separate smaller units have been rejected in favor of a single large unit. Boston School Committee, 2 MLC 1557 (1976); Town of Dartmouth, 1 MLC 1257 (1975); Town of Agawam, 3 MLC 1681 (H.O., 1976).

3) Unit Stipulations

When both an employer and an employee organization agree on the composition of a bargaining unit, the Commission will generally adopt their agreement.

The Commission will not look beyond the clear meaning of a stipulation mutually agreeable to both parties. Medford Housing Authority, 4 MLC 1458 (H.O., 1977). The possibility that another unit may be equally or more appropriate will not preclude the Commission's acceptance of a stipulation for a unit which is itself

valid. Board of Trustees, State Colleges, 4 MLC 1428 (1977). An agreement of the parties may, however, be rejected by the Commission if the stipulated unit is contrary to law or policy. City of Lowell, 3 MLC 1260 (H.O., 1976), aff'd 3 MLC 1510 (1977).

4) Other factors

a.) History, Extent of Organization, and Employee Wishes

In its unit determinations, the Commission also considers bargaining history, extent of organization, and the wishes of employees. Town of Agawam, 4 MLC 1060 (H.O., 1977). Although bargaining history and employee wishes are taken into account, they are factors lacking controlling weight. Boston School Committee, 2 MLC 1557 (1976); Community Colleges, 1 MLC 1426 (1975). Employee wishes become an important factor only where there is a decision to be made between two or more equally appropriate units. Weymouth School Committee, MCR-2427, 2428 (8/5/77).

The Commission has repeatedly stated that employee organizations may not pick and choose among employees sharing a community of interest on the basis of extent of organization. It must be demonstrated that the group has a community of interest separate and distinct from other employees. Lynn Hospital, 1 MLC 1023 (1974).

b.) Source of Funding

The source of funding of an employee's position is not dispositive in unit determination. A finding of community of interest between employees funded from sources other than the public employer and employees paid directly by the public employer will lead to an overall unit which includes CETA employees. City of Springfield, 2 MLC 1233 (1975); Town of Sheffield, 4 MLC 1144 (H.O., 1977); (Title I teachers), Somerville School Committee, 4 MLC 1244 (H.O., 1977). A contrary result follows if there is an insufficient community of interest between two groups. City of Fall River, 3 MLC 1320 (H.O., 1977) (teacher aides and lunchroom aides); Somerville School Committee, 4 MLC 1244 (H.O. 1977) (Project SCALE teachers).

C. Separate Supervisory Units

Unlike the National Labor Relations Act, Chapter 150E does not exclude supervisory employees from participation in collective bargaining. However, the Commission favors units of supervisors separate from rank and file units. Chicopee School Committee, 1 MLC 1195 (1974).

In determining whether employees are supervisors who should be placed in a separate unit, the Commission examines both supervisory authority and the total relationship between employees, City of Revere, 4 MLC 1593 (H.O., 1977), aff'd., 4 MLC__(1978); University of Massachusetts, 3 MLC 1179 (1976). Supervisors are employees with independent authority or effective recommendatory powers in major personnel decisions such as hiring, transfer, suspension, promotion, and discharge. They also have the authority to direct employees and to resolve grievances. University of Massachusetts, 3 MLC 1179 (1976). When supervisory power is shared to a great degree with other employees and no conflicts are apparent, employees will not be placed in a separate unit. University of Massachusetts, 3 MLC 1179 (1976).

In the area of professional school employees and police officers, the Commission has stated in numerous cases that it favors the creation of two units separating administrative employees from those they supervise. City of Taunton, 3 MLC 1686 (H.O., 1977); City of Everett, 3 MLC 1372 (1977); Chicopee School Committee, 1 MLC 1195 (1974). It may depart from this approach and allow an over-all unit only in small towns where the size of an administrative unit would significantly impair the bargaining strength of the administrators. Cambridge Police Department, 2 MLC 1027 (1975); Chicopee School Committee, 1 MLC 1195 (1974).

D. Employees Other Than Regular Full-Time Employees

1) Part-Time Employees

Litigation in this area has involved part-timers, seasonal employees, and those whose salary comes from a source other than the Chapter 150E public employer. The Commission has repeatedly held that individuals other than regular full-time workers are "employees" within the meaning of Chapter 150E. Pittsfield School Committee, 2 MLC 1523 (1976); City of Springfield, 2 MLC 1233 (1975); Town of Lincoln, 1 MLC 1422 (1975); Town of Burlington, 3 MLC 1350 (H.O., 1977). Thus, the issue in these cases is the statutory standards described in Section A above.

Part-time employees who have a substantial community of interest in wages, hours, and working conditions with those in a unit of full-timers are regarded as "regular" part-time employees and will be included in the bargaining unit. Town of Swansea, 3 MLC 1678 (H.O., 1977), aff'd 4 MLC 1527 (1977); Quincy Library Dept., 3 MLC 1517 (1977); University of Massachusetts, 3 MLC 1179 (1976); Southboro School Committee, 2 MLC 1467 (1976); County of Plymouth, 2 MLC 1106 (1975); (part-time police officers), Town of Sterling, 4 MLC 1473 (H.O., 1977). If, however, part-time employees lack a community of interest with full-timers, they will be excluded from the unit. Town of Lincoln, 1 MLC 1422 (1975); Town of Hamilton, 2 MLC 1512 (H.O., 1976).

Part-timers seeking a separate unit must demonstrate a community of interest among themselves for the Commission to find such a unit appropriate. A similarity of interests has been deemed sufficient to warrant a separate unit of evening school teachers, Pittsfield School Committee, 2 MLC 1523 (1976). Relative stability of part-time work force, consistency in hours, and clearly definable boundaries of bargaining unit are factors weighing in favor of a separate part-timers' unit. Gloucester School Committee, 4 MLC 1497 (H.O., 1977). Where these factors are not present, a separate unit is inappropriate. Town of Lincoln, 1 MLC 1422 (1975); Town of Saugus, 4 MLC 1361 (H.O., 1977).

2) Seasonal and Casual Employees

The appropriateness of bargaining units containing substantial numbers of "seasonal" employees has normally been determined based upon the employees' expectation of continuing employment. Similarly, employees are not considered "casuals" where their hours are regular and consistent and there is a reasonable expectation of rehire or reassignment on a year-to-year basis. Gloucester School Committee, 4 MLC 1497 (H.O., 1977). If there is substantial stability in the work

force, year after year, the "seasonals" are either included in a bargaining unit with the regulars, or held to constitute their own separate unit. Bay State Harness Raceway, 2 MLC 1340 (1976); City of Gloucester, 1 MLC 1170 (1974). Where, however, the public employer's required budgetary process would make effective bargaining for seasonal employees impossible, a separate unit has not been allowed. City of Gloucester, 1 MLC 1170 (1974).

E. Modification of Existing Bargaining Units

The Commission has broad power to investigate and decide representation questions arising out of existing units. See City of Boston, 2 MLC 1353 (1976). This includes the power to exclude from existing units employees who are managerial. Wellesley School Committee, 1 MLC 1389 (1975); confidential, Silver Lake Regional School Committee, 1 MLC 1240 (1975); or otherwise inappropriately included, City of Boston, 2 MLC 1353 (1976). A CAS petition is a petition for clarification of the bargaining unit and must be filed by the employer or the employee organization. An individual has no standing to file a CAS petition; however, he or she has a more limited right to request the Commission under MLRC Rules to investigate a matter concerning certification. See MLRC Rule 14.15* Town of Burlington, MCR-2452, CAS-2120, 4 MLC __ (H.O., 1978).

1) Severance and Exclusion

Petitions seeking to sever employees from currently existing units are normally not favored. Saugus School Committee, 2 MLC 1412 (1976). It must be proved that the employees sought constitute a functionally distinct group with special interests sufficiently distinguishable from those of other unit employees. Evidence must indicate special negotiating concerns which have caused significant divisions within the existing bargaining unit. The Commission also considers the industry practice of inclusions and exclusions from over-all units the employees seek to sever. Saugus School Committee, 2 MLC 1412 (1976); City of Beverly, 1 MLC 1108 (1974). The petitioner must demonstrate that the stability of labor relations and effective representation will not be unnecessarily compromised by the severance. Massachusetts Port Authority, 2 MLC 1408 (1976).

In cases involving severance of police supervisors, however, the issue is generally not whether there should be a separate supervisory unit but where the division should be made once the department has reached a sufficient size. Cambridge Police Department, 2 MLC 1027 (1975). The Commission's standard for determining at which rank to sever police units is based on finding the rank at which the distinction between supervisory and non-supervisory responsibilities is manifested. Intra-union conflict at the bargaining table may be relevant. This question remains undecided. City of Everett, 3 MLC 1372 (1977); City of Taunton, 3 MLC 1686 (H.O., 1977).

Separate units for superior officers in fire departments have not been created where there is a long history of collective bargaining in an overall unit. Town of Dedham, 3 MLC 1130 (H.O. 1976), aff'd 3 MLC 1332 (1976), reaff'd 4 MLC ___ (1977); but see Town of Greenfield, 4 MLC 1225 (H.O., 1977) where a Commission hearing officer excluded deputy chiefs because of their extensive supervisory authority (including the administration of discipline) and the absence of a long bargaining history in an overall unit.

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*The Rules and Regulations of the Commission appear as Chapter 402 of the Code of Massachusetts Regulations (CMR). The official cite 402 CMR 14.15 is abbreviated herein as MLRC Rule 14.15.

2) Stipulations by the Parties

Where both employer and the employee organization stipulate that certain confidential positions should be excluded from a previously issued certification, the Commission will adopt that stipulation as long as it is not in conflict with the Commission's rules or established practices. When the Commission has previously determined the appropriate bargaining unit and the employer refuses to bargain because of alleged inappropriateness of the unit, the decision will stand unless the employer can show changed circumstances. Needham School Committee, 4 MLC 1120 (1977).

If both parties have agreed to include an employee in a unit and subsequently one of the parties seeks exclusion over the objection of the other, the party seeking exclusion may be estopped for at least the duration of the collective bargaining agreement. City of Somerville, 2 MLC 1546 (1976); Pittsfield School Committee, 3 MLC 1082 (1976).

3) Accretion

The Commission in several cases has enunciated the principles to be applied when a party seeks to accrete job classificiations to an existing bargaining unit. Accretion will be permitted when: (1) a new employee classification has been created; (2) an employer's operations have been expanded subsequent to a certification and employees are normal accretions; or, (3) the job function of the disputed title has changed significantly since certification or recognition. Additionally, the Commission will look to the intent of the parties at the time of certification or recognition and the community of interest between the disputed employees and members of the unit. Peabody School Committee, 3 MLC 1512 (1977); City of Lynn, 2 MLC 1541 (1976); University of Massachusetts, Boston, 2 MLC 1001 (1975); City of Somerville, 1 MLC 1234 (1975); Amesbury School Committee, 3 MLC 1447 (H.O., 1977).

The Commission will not allow accretion if: (1) the classifications sought by the union were in existence prior to the original election and certification, and were excluded from the unit by the parties; (2) neither certification nor subsequent contracts had included those classifications; (3) the basic job functions of those classifications remains the same; (4) the previously excluded employees do not work in the same area as the unit employees; (5) the employees perform different job functions and have different supervisors. Peabody School Committee, supra; Pittsfield School Committee, 3 MLC 1082 (H.O., 1976); Town of Agawam, 2 MLC 1367 (H.O., 1976).

Where accretion has not been allowed, the Commission may, in rare cases, permit a self-determination election among employees holding the disputed titles. They are given the choice of being represented by the incumbent in an existing unit, or of not being represented in any unit. A self-determination election may be ordered where: the petition is accompanied by a sufficient showing of interest; there is sufficient community of interest between the employees in disputed titles and employees in the existing unit; the petition seeks to include all such employees; and the reasons for the original exclusion no longer pertain. City of Quincy, 3 MLC 1326 (H.O., 1976), aff'd 3 MLC 1517 (1977).

IV. Procedures for Determining Bargaining Representatives

A. Notice

Commission rules require that all interested parties be given notice of representation proceedings. MLRC Rule 14. The petitioning employee organization and the employer have a joint obligation to provide the Commission with information regarding other organizations that may represent any employees affected by the petition. City of Quincy, CAS-2062 (1976).

B. Contract and Certification Bars to Elections

The contract bar doctrine prohibits the direction of an election, except for good cause, if a valid collective bargaining agreement is in effect. The doctrine is discretionary. It will be applied or waived depending on the facts of the case with a view toward fairness for employer and employees alike and stability of bargaining agreements. Easton School Committee, 2 MLC 1111 (1975); Southeastern Mass. University, 1 MLC 1418 (1975).

A contract must be signed by all parties to operate as a bar. Even when the terms were agreed on, the parties had agreed to sign, the contract was in near final form and some provisions had already been implemented, the contract was held ineffective as a bar because it was unsigned. Essex County, 4 MLC 1147 (H.O., 1977); Nashoba Valley Technical High School District, 4 MLC 1589 (H.O., 1977); Somerville School Committee, 2 MLC 1335 (H.O., 1976); Town of Maynard, 2 MLC 1253 (H.O., 1975). An expired contract will not operate as a bar even though the parties agree to continue its terms during negotiations. Brockton School Committee, 4 MLC 1005 (1977); University of Massachusetts, 2 MLC 1001 (1975). A successor contract negotiated and ratified prior to the open period under the existing contract will not bar a petition which would be timely had the new agreement not been negotiated. Saugus School Committee, 2 MLC 1414 (1976). A contract which does not provide benefits for the employees sought in a petition will not act as a bar. Hudson Bus Lines, 4 MLC 1630 (1977).

The expansion of the bargaining unit is not such an unusual occurrence as to waive the contract bar if the complement of employees from the old unit is a substantial part of the new unit and representative of the employees in the expanded unit. North Middlesex Regional School District, MCR-2665, 4 MLC __ (H.O., 1978).

In rare situations, the Commission may approve a contractual waiver of the contract bar rule when such a waiver serves the purposes of the Law. Worcester School Committee, 4 MLC 1015 (H.O., 1977). The rule will not be waived, however, when members of the bargaining unit are dissatisfied with their representative or when intra-union disputes fall short of a schism going to the very identity of the bargaining representative. City of Salem, 1 MLC 1172 (1974); City of Worcester, 1 MLC 1069 (1974).

Notwithstanding the general contract bar rule, MLRC Rule 14.06 provides that an election petition will be entertained if filed during an "open period" of no more than 180 days and no fewer than 150 days prior to the termination date of the contract. A petition must be actually received at the Commission's office within the

180-to-150 day open period. City of Springfield, 1 MLC 1446 (1975). Petitions filed during the open period may be amended after the end of the open period if the amendment does not claim a unit larger and substantially different from that originally sought. Commonwealth of Massachusetts (Unit 4), SCR-2100, (1977).

The certification bar rule provides that no election will be directed in a unit within one year of a prior election. However, a rival petition for certification will be processed by the Commission even though filed prior to the expiration of the cerification year if the election is conducted after the statutory twelve-month period. There must be no contract bar. City of Gardner, 1 MLC 1115 (1974).

C. Representation Petition and Hearings

MLRC Rule 14.05 requires that a petitioning employee organization be designated as the exclusive representative by 30 percent of the employees in the proposed unit. The Commission's review of this showing of interest is an administrative determination which is not subject to challenge. Duxbury School Department, 1 MLC 1020 (1974). Local 829, Teamsters, 4 MLC 1673 (1978). The 30 percent requirement has been met where petitioner based its showing on the employer's inaccurate statement of the number of employees in the unit. Commonwealth of Massachusetts (Unit 4), SCR-2100, (1977).

While an employer may file a representation petition, it will be dismissed where no employee organization seeks recognition or claims majority status in the unit sought. Commonwealth of Massachusetts, 1 MLC 1190 (1974). Employees may petition for a decertification election but must seek a unit coextensive with the previously certified or recognized unit. Decertification elections for a portion of a bargaining unit are not permitted. City of Lynn, 2 MLC 1541 (1976).

A petition may be amended prior to or at the representation hearing if the amended petition does not seek a substantially larger or different unit. Commonwealth of Massachusetts, (Unit 4), SCR-2100, (1977). The Commission will order an election where neither the employer nor the incumbent appears at a scheduled hearing but where the petitioning union presents a sufficient showing of interest. Town of Auburn, MCR-2507, 4 MLC __ (1977). An election may also be directed without a hearing where there are no litigable issues. City of Lowell, MCR-2538, 4 MLC __ (1977). A motion to intervene is untimely where hearings have been closed, an election has been ordered, and where granting the motion would require delaying the election, Town of Duxbury, 4 MLC 1168 (1977).

Generally, unless the charging party requests the Commission to proceed, no election will be directed while unfair labor practices affecting the involved unit are pending. Town of Wareham, 2 MLC 1547 (1976).

D. Elections: Procedures, Objections, and Challenges

1) In General

The Commission exercises wide discretion in the manner and method of conducting representation elections. Community Colleges, 2 MLC 1146 (1975). Thus, on-site or mail ballot elections may be ordered. Furthermore, the Commission has the exclusive power to determine the name of the organization appearing on the ballot in order to insure that the ballot is not confusing to the voters. Department of Public Welfare, 1 MLC 1127 (1974). The Commission's certification runs to the employee organization appearing on the ballot. Commonwealth of Massachusetts (Units 1, 2, 6, 8 and 9), 2 MLC 1322 (1976). The Commission

will adopt the standards applied by the National Labor Relations Board in determining eligibility of voters who were employed on the cut-off date, but who are not actively employed at the time of the election. Town of Dudley, 4 MLC 1291 (1977).

2). Procedure for Challenges

MLRC Rule 14.12 applies to election challenges and objections.

Objections to an election must be filed within five days of the tally of ballots. Only a party in interest can object to an election. Boston School Committee, 3 MLC 1043 (1976). A party seeking to set aside an election because of conduct occurring prior to or during the course of the election must furnish substantial evidence that the conduct had a significant impact on the election results. City of Boston, 2 MLC 1275 (1976).

No post-election hearing will be conducted if the objections do not raise substantial questions of fact or a legally significant basis for setting aside the election. Rockland Police Department, 1 MLC 1217 (1974). City of Brockton, 4 MLC 1005 (1977). Matters raised as objections to the election will not be considered if they should have been raised at the pre-election representation hearing. Rockland Police Dept., 1 MLC 1217 (1974).

The Commission has permitted employees whose managerial status was questioned to vote under challenge. It was ruled that the determination of managerial status would be made after the election and the employees' ballots would not be counted until the challenges were resolved. Community Colleges, 2 MLC 1146 (1975). An employee organization's failure to comply with the filing requirements of sections 13 and 14 of the Law does not require that an election be set aside. See, Commonwealth of Massachusetts, 2 MLC 1322 (1976), where the Commission conditioned certification upon the petitioner's expeditious compliance with the Law's reporting provisions. Sullivan v. Labor Relations Commission, 1977 Mass. App. Adv. Sh. 904, 364 N.E.2d 1099.

3) Misrepresentation and Interference

An election will not be set aside on the ground of misrepresentation unless a party has substantially misrepresented a highly material fact, the truth of which lies within the special knowledge of the party making the misrepresentation. Nor will an election be overturned if the voters have independent knowledge with which to evaluate the misrepresentation or if there was no substantial impact on the election. Commonwealth of Massachusetts, 3 MLC 1067 (1976).

Minimal inaccuracies in the voter eligibility list are not sufficient to invalidate an election. An employer's good faith and substantial effort to provide the list will suffice. City of Quincy, 1 MLC 1161 (1974).

But where one of the parties to a mail election distributed copies of the Commission's specimen ballot with partisan election propaganda superimposed on it, the Commission found that such propaganda issued close to the time of the election, was cause to set that election aside. Commonwealth of Massachusetts, 2 MLC 1261 (1976).

Where there is no allegation of coercion, the mere presence of union agents in a polling area is not a sufficient basis for setting aside an election. Local 829 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 3 MLC 1696 (1977). In a close election, however, the Commission will not certify the results when a large proportion of ballots was cast during a time that employees congregated in the immediate voting area and conversed among themselves. Local 829, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, 3 MLC 1696 (1977).

E. Voluntary Recognition

MLRC Rule 14.06(2) provides for voluntary recognition of an employee organization by the employer. In order to enter into a recognition agreement the employer must: (1) have a good faith belief in the employee organization's majority status in the unit; (2) post a notice of intention to recognize the employee organization for a period of twenty days prior to recognition; and (3) set forth in writing in the agreement the specific unit involved. No recognition may be granted where, during the posting period, a valid petition raising a question of representation has been filed with the Commission.

V. Duty Of Fair Representation

Section 5 of the Law provides that the exclusive representative "...shall be responsible for representing the interests of all [unit] employees without discrimination and without regard to employee organization membership."

The Commission has interpreted this section to impose upon employee organizations a duty to represent fairly all members of the unit in all phases of collective bargaining, including both the negotiating of contracts and the processing of grievances. A breach of this duty is considered a prohibited practice. Framingham School Committee, 2 MLC 1292 (1976). In that case, the Association was found to have breached its duty of fair representation by withdrawing a meritorious grievance without informing the grievant or his attorney, and by refusing to bear one-half the cost of arbitration as provided in the collective bargaining agreement.

Although a union may not arbitrarily ignore a meritorious grievance or process it in a prefunctory manner, it need not formally process every grievance filed if it in good faith determines that a grievance is without merit. Local 285, SEIU, 3 MLC 1646 (1976); Robert W. Kreps and AFSCME, 3 MLC 1087 (H.O., 1976). A union does commit a prohibited practice, however, when it coerces an employee into becoming a union member by suggesting that the quality of representation in the grievance procedure is dependent on union membership. Local 285, SEIU, 3 MLC 1646 (1976).

VI. Duty To Bargain

Section 6 of the Law obligates employers and unions to meet, including meetings in advance of the employer's budget-making process, and to negotiate in good faith about wages, hours, standards of productivity and performance, and any other terms and conditions of employment. Violations of the duty to bargain are prohibited practices under sections 10(a)(5) and 10(b)(2) of the Law.

A. Scope of Bargaining

An examination of the duty to bargain often involves an initial determination of the scope of bargaining, i.e., which subjects must be bargained over and those subjects which may be bargained over.

Scope of bargaining issues are resolved by categorizing disputed subject matters as either mandatory or non-mandatory subjects of bargaining. Town of Danvers, 3 MLC 1559 (1977). If a particular subject is within the mandatory scope of bargaining, either party commits an unfair labor practice when it refuses a demand to negotiate. When a contract includes no waiver clause or other indication that the contract was intended to represent the entire and complete agreement of the parties, those parties have a continuing duty to bargain upon request about all mandatory subjects never bargained or embodied in the contract. City of Salem, 4 MLC 1196 (H.O., 1977).

The parties may bargain over non-mandatory subjects but neither party may bargain to impasse over such subjects. IAFF, Local 1009, 2 MLC 1238 (1975); Plainville School Committee, 4 MLC 1461 (H.O., 1977); Town of Andover, 4 MLC 1081 (1977). While it is clear that an employer does not have the duty to bargain over non-mandatory subjects, the employer must bargain over the impact of a managerial decision which would affect a mandatory subject of bargaining. Leominister School Committee, 3 MLC 1530 (H.O., 1977), aff'd. 4 MLC 1512 (1977); Newton School Custodian Association, 4 MLC 1334 (H.O., 1977); Town of Andover, 3 MLC 1710 (1977); Groton School Committee, 1 MLC 1221 (1975).

1) Mandatory Subjects

In very general terms, mandatory subjects of bargaining are those with a direct impact on terms and conditions of employment. Permissive subjects are those involving core governmental decisions removed from terms and conditions of employment. Town of Danvers, 3 MLC 1559 (1977).

The Commission has held that the following are mandatory subjects of bargaining: initial wages for new unit positions, Melrose School Committee, 3 MLC 1302 (1976); Northeast Regional School Committee, 1 MLC 1005 (1974); insurance costs, Medford School Committee, 4 MLC 1450 (H.O., 1977); working hours, work load, seniority, Medford School Committee, 1 MLC 1250 (1975); work assignments and job duties, Town of Danvers, 3 MLC 1559 (1977); assignment of unit work to non-unit personnel, Town of Andover, 3 MLC 1710 (1977); payday schedules and compensation for added duties, Lawrence School Committee, 3 MLC 1304 (1976); work rules relating to policy on check-cashing time, Norwood School Committee, 4 MLC 1467 (H.O., 1977); promotion procedures; Town of Danvers, 3 MLC 1559 (1976); performance evaluation systems, Town of Wayland, 3 MLC 1724 (1977). Also subject to mandatory bargaining are: residency requirements for continued employment and promotion of unit members, Boston School Committee, 3 MLC 1630 (1977); City of Worcester, 4 MLC 1285 (H.O., 1977); Lynn School Committee, 4 MLC 1104 (H.O., 1977); granting of leave, City of Boston, 3 MLC 1450 (1977); holiday time off, Town of East Bridgewater, 4 MLC 1486 (H.O., 1977); employee use of non-active working time, City of Everett, 2 MLC 1471 (1976); wage re-opener provisions, Medford School Committee, 3 MLC 1413 (1977); number of employees on a piece of firefighting apparatus when it responds to an alarm to the extent that a question of safety is raised, City of Newton, 4 MLC 1282 (1977), aff. City of Newton, 2 MLC 1192 (H.O., 1975); plant rules and on-premise access to employees for the transaction of union business, Town of Marblehead, 1 MLC 1140 (1975); the impact of a layoff decision, Newton School Custodian Association, 4 MLC 1334 (H.O., 1977); implementation of a decision to contract out work previously done by bargaining unit employees, City of Boston, 4 MLC 1202 (1977).

2) Non-Mandatory Subjects

The Commission has found the following topics to be non-mandatory subjects of bargaining: school curriculum decisions, Groton School Committee, 1 MLC 1224 (1974); minimum manning per shift, Town of Danvers, 3 MLC 1559 (1977); wage parity clauses, City of Cambridge, 3 MLC 1587 (H.O., 1977), aff'd 4 MLC 1447 (1977), position consolidations, Lawrence School Committee, 3 MLC 1304 (1976); bargaining open to the public, Town of Marion, 2 MLC 1256 (1975); hiring of additional employees to perform unit work, Town of Andover, 3 MLC 1710 (1977).

In Worcester Police Officials Association, 4 MLC 1366 (1977), the Commission declined to determine whether certain proposals were "legal" where the alleged illegality concerned a mandatory topic which was subject to

B. Good Faith Bargaining

1) In General

The "good faith" requirement of the statute is an intangible factor provable only by inference or implication from the behavior of the parties. It precludes mere surface bargaining, or avoiding a real attempt to reach a resolution while purporting to be meeting for the purpose of bargaining. City of Chicopee, 2 MLC 1071 (1975).

The duty does not compel either party to agree to a proposal or make a concession. It does require, however, that the parties enter into discussions with an open and fair mind, have a sincere purpose to find a basis of agreement, and make reasonable efforts to compromise their differences. King Philip Regional School Committee, 2 MLC 1393 (1976); City of Chicopee, 2 MLC 1071 (1975); Berlin-Boylston Regional School Committee, 3 MLC 1700 (H.O., 1977); City of Chicopee, 2 MLC 1071 (H.O., 1975); Plainville School Committee, 4 MLC 1461 (H.O., 1977). In assessing the good faith requirement, the Commission will look not merely to isolated, specific instances of bad faith but to the totality of the parties' conduct, including acts away from the bargaining table. Berlin-Boylston, 3 MLC 1700 (H.O., 1977); King Philip, 2 MLC 1393 (1976).

2) Refusal to Negotiate

Refusal to meet with the union when it has requested a negotiating session is a refusal to bargain in good faith. City of Chelsea, 3 MLC 1169 (1976); City of Chelsea, 2 MLC 1432 (1976).

a.) Attempts to Bypass Union

It is well-established that the duty to bargain collectively with the exclusive representative mandates that an employer may not deal directly with employees on matters that are properly the subject of negotiations with the employees' representative. Thus, an employer who bypasses a union to deal directly with individual employees violates the duty to bargain in good faith. Blue Hills Regional School Committee, 3 MLC 1613 (1977); Lawrence School Committee, 3 MLC 1304 (1976).

b.) Certification: One Year Presumption of Majority Status

During the year following certification a union is irrebutably presumed to have majority status. Thus an employer must bargain with the certified representative during the certification year even if the union has lost majority status. City of Cambridge, 4 MLC 1044 (1977). Similarly, new employees are presumed to support the union in the same proportion as old employees did at the time of the election. Therefore, as a matter of law, evidence of turnover in workforce is irrelevant for the purposes of determining the employer's duty to bargain during the certification year. City of Cambridge, 4 MLC 1044 (1977).

c.) Funding; Bargaining Prior to Budget

An assumption that the legislative body will ultimately reject a funding request does not excuse an initial refusal to negotiate. Middlesex County Commissioners, 3 MLC 1594 (1977). Similarly, the Commission has found a violation of the duty to bargain where an employer refused to schedule bargaining sessions until after its budget had been submitted. In such a situation the employer could not claim that its negotiations were being conducted in good faith when it was locked into its already fixed budget. City of Chicopee, 2 MLC 1071 (H.O., 1975). Nor may a town offer legislation affecting wages and conditions employment to the town council while contract negotiations are in progress, even where the town asserts that the changes will not go into effect until after an agreement with the union is reached. Town of Arlington, 4 MLC 1644 (H.O., 1977).

d.) Effect of Prohibited Practice Charges and Litigation

An employer cannot refuse to bargain because a prohibited practice charge has been brought against it. Similarly, bargaining may not be contingent upon the withdrawal of resolution of pending prohibited practice charges. Commonwealth of Massachusetts, SUP-2078B, (1976); Berlin-Boylston Regional School Committee, 3 MLC 1700 (H.O., 1977); Southern Worcester County Regional Vocational School District, 2 MLC 1488 (1976). Bargaining cannot be delayed or pre-conditioned upon the resolution of pending litigation. Town of Ipswich, 4 MLC 1600 (1977)

3) Employer Negotiator

The employer must appoint a negotiator. City of Chelsea, 3 MLC 1169 (1976). Although an employer does not have to be represented by a person with authority to conclude a binding contract, the character and powers of the employer's representative are factors which are considered in determining whether bargaining has been conducted in good faith. The Commission may find a violation of the duty if the employer's representative has authority to contract and attends none of the bargaining sessions or has no authority to make commitments on any vital or substantive provisions of a proposed contract. The authority of an employer's representative is deficient if it is limited to the transmittal of proposals to and from the employer, discussion concerning such proposals, and the making of recommendations to the employer. Middlesex County Commissioners, 3 MLC 1594 (1977). If an employer representative's authority is limited, the employer must so inform the union. Spencer-East Brookfield School Committee, 3 MLC 1400 (H.O., 1977). Where the authority of the Personnel Board was ambiguous, but they actively supported the agreement before the Selectmen, they bargained in good faith. Town of Millbury, 4 MLC 1267 (H.O., 1977).

4) Open Meetings and Disclosure

Since the environment in which negotiations take place is so important to the proper functioning of the bargaining process, the Commission has found that insistence on bargaining in open session (i.e., bargaining meetings open to the public) violates the Law. Town of Winchendon, 3 MLC 1316 (1976); Town of Marion, 2 MLC 1256 (1975); Town of Norton, 3 MLC 1140 (1976). This applies as well to grievance meetings held during the life of the contract. Ayer School Committee, 4 MLC 1027 (H.O., 1977), aff'd 4 MLC 1478; Webster School Committee, 4 MLC 1692 (H.O., 1978).

The open meeting requirements of G.L.c.39,§.23b do not apply to collective bargaining or grievance meetings under the collective bargaining agreement. Gliglione v. Glennon, Civil Action No. 7194 (Worcester Superior Court 5/31/77). However, this does not preclude negotiations in a public forum if the parties so agree. City of Attleboro, 3 MLC 1408 (1977). The union may waive its right to closed meetings but such waiver must be express, knowing and unequivocal. Ayer School Committee, 4 MLC 1478 (1977). Similarly, it does not mean that the parties may have no access to the press, unless that privilege is voluntarily foregone or overriden by statute, so long as the character, timing and quantity of statements to the press comport with good faith bargaining. Town of Stoneham, 3 MLC 1355 (H.O., 1977). Neither party may require disclosure or the composition of the other side's bargaining team as a condition precedent to negotiations or coerce the other party in its choice of a bargaining representative. Southern Worcester County, 2 MLC 1488 (1976).

5) Process of Negotiations

Although the Law does not compel agreement on any issue, neither party can reject the other's proposals without offering counter-proposals. City of Chelsea, 3 MLC 1048 (H.O., 1977). Nor may a party engage in surface bargaining by rejecting the other side's proposals and tendering its own without attempting to reconcile the differences. Town of Saugus, 2 MLC 1480 (1976). The duty is also violated if a party merely attends a prescribed number of meetings without engaging in meaningful discussions. Southern Worcester County, 2 MLC 1488 (1976). The Commission has found bad faith bargaining where an employer, months after negotiations have begun, offers predictably unacceptable new proposals which violate the parties' express agreement to limit the scope of bargaining to certain subjects. Lawrence School Committee and SEIU, Local 310, MUP-546 (1974). Additionally, given a demand to bargain, the Commission views with disfavor a party's causing long lapses between negotiating sessions. Middlesex County Commissioners, 3 MLC 1594 (1977).

To insist to the point of impasse on the inclusion in an agreement of a permissive subject of bargaining is a violation of the duty to bargain in good faith. Town of Andover, 4 MLC 1081 (1977). After an alleged impasse, the duty to bargain is revived when either party indicates a desire to negotiate in good faith over previously dead-locked issues. Lawrence School Committee, 3 MLC 1304 (1976).

6) Reducing the Agreement to Writing

Where the parties have reached agreement on all substantive issues, the agreement must be reduced to writing. At this point, neither of the parties is free to modify the substantive terms or to insist on the addition of new items or the deletion of agreed upon terms. Blue Hills Regional School Committee, 3 MLC 1613 (1977); Spencer-East brookfield School Committee, 3 MLC 1400 (H.O., 1977). It is

a refusal to bargain in good faith if the union president signs a memorandum outlining the terms for an agreement and the union refuses to execute a contract incorporating those provisions. Belmont School Committee, 4 MLC 1189 (H.O., 1977), aff'd 4 MLC 1707 (1978).

7) Duty to Support the Agreement

The obligation to bargain in good faith includes the duty to support the agreed upon proposals. Thus, where a school committee's negotiating subcommittee agrees to the terms of an agreement, members of the subcommittee must support and vote for the agreement when a vote on acceptance is taken by the entire committee. Spencer-East Brookfield Regional School Committee, 3 MLC 1400 (H.O., 1977). Additionally, the duty to bargain includes the obligation of the employer to support the contract by submitting to the appropriate legislative body and supporting a request for an appropriation to fund the cost items of the agreement. City of Chicopee, 2 MLC 1071 (H.O., 1975); County of Worcester, 1 MLC 1155 (1974); Town of Franklin, 1 MLC 1026 (1974); Mendes v. City of Taunton, 366 Mass. 109, 315 N.E.2d 865, 871 (19740. Not only must the employer support the contract before the legislative body, the employer must also take affirmative action to defeat legislation which would prevent the employer from carrying out the terms of the agreement. Turner Falls Fire District, 4 MLC 1658 (1977).

Where the chairperson of the Board of Selectmen made a sincere but erroneous attempt to explain the legal implications of a collective bargaining agreement, the Commission ruled that such behavior did not indicate insufficient support of the collective bargaining agreement. Town of North Attleborough, 4 MLC 1585 (1977).

Where the selectmen are silent when confronted with opposition to the collective bargaining agreement at a town meeting, their silence does not necessarily indicate insufficient support of the collective bargaining agreement if the totality of their conduct could have been reasonably interpreted as being supportive of the agreement. Town of Billerica, MUP-2873, 4 MLC __(H.O., 1978). Newly elected successor public officials cannot be required to indorse publicly the terms of a collective bargaining agreement negotiated by their predecessors if such indorsement involves the exercise of independent judgment. Labor Relations Commission v. Board of Selectmen of Dracut, SJC, Docket #868, March 14, 1978.

Nothing compels the employer to submit the collective bargaining agreement to any body but the legislature. Where an advisory board or finance committee is not the employer's bargaining representative, that body need not support the contract. Town of Webster, 4 MLC 1543 (1977). Coupled with the statutory duty to request an appropriation (See Section VII below) is the correlative obligation of an employer otherwise to facilitate implementation of the agreement. City of Boston School Committee, 1 MLC 1287 (1975).

8) Unilateral Change

The obligation to bargain in good faith does not cease with the negotiation of an agreement, but continues during administration of the contract. Ayer School Committee, 4 MLC 1027 (H.O., 1977) aff'd, 4 MLC 1478 (1977). Town of Andover, 3 MLC 1710 (1977); City of Chelsea, 3 MLC 1169 (H.O., 1976), aff'd 3 MLC 1384 (1977); City of Boston, 2 MLC 1331 (1976); Worcester School Committee, 2 MLC 1283 (1976).

Included in the duty to bargain is the employer's obligation to negotiate before changing wages, hours, working conditions, or standards of productivity and performance. Lawrence School Committee, 4 MLC 1422 (1977); Town of Wayland, 3 MLC 1724 (1977); Boston School Committee, 3 MLC 1603 (1977); City of Boston, 3 MLC 1450 (1977); Town of North Andover, 1 MLC 1103 (1974).

a.) Notice

The employer must notify the union of potential changes before they are announced so that the bargaining representative has an opportunity to present arguments and proposals concerning the proposed alternatives. City of Boston, 3 MLC 1421 (H.O., 1977); City of Chicopee, 2 MLC 1971 (1975). The duty is not satisfied by presenting the change as a fait accompli and then offering to bargain. City of Everett, 2 MLC 1471 (1976); City of Cambridge, 4 MLC 1620 (H.O., 1977).

b.) Elements of Unilateral Change

The elements of a unilateral change are: 1) pre-existing condition of employment; 2) unilateral alteration; and 3) effect on mandatory subject of bargaining. (See Scope of Bargaining, Mandatory and Non-Mandatory Subjects, under Duty to Bargain, Section VI A. above.) Town of North Andover, 1 MLC 1103 (1974). An employer's good faith in unilaterally altering mandatory subjects of bargaining is irrelevant, as is the fact that the union might not object to the substance of the change. Town of Wayland, 3 MLC 1724 (1977); Town of Natick, 2 MLC 1086 (1975). The maintenance of the status quo applies not only to contractual provisions, but also to long-standing customs and practices, City of Boston, 3 MLC 1450 (1977); City of Everett, 2 MLC 1471 (1976); Town of Marblehead, 1 MLC 1140 (1974); City of Cambridge, 4 MLC 1620 (H.O., 1977); Norwood School Committee, 4 MLC 1467 (H.O., 1977). Cf. City of Worcester, 4 MLC 1317 (H.O., 1977) where a procedure in effect for 1 1/2 years, begun by necessity by new court rules and rescinded when the court rules dissolved, was not a past practice requiring the employer to bargain over the change.

Requiring open sessions for grievance procedure is a unilateral change when past practice has been closed sessions. Ashland Educator's Association, 4 MLC 1251 (H.O., 1977). Where there has been no change in past practice, an employer's transfer of policemen to other departments, not replacing them with other policemen or civilians and not substantially increasing workload of remaining employees, is not a violation, Boston Police Department, 4 MLC 1153 (1977).

In an impasse situation, an employer may implement a unilateral change in a subject matter under negotiation only if the change is consistent with the bargaining position previously communicated to the union, the employer has not engaged in any bad faith bargaining, there is no effort to undermine the status of the union as bargaining agent, and the employers remains willing to fulfill its bargaining obligations. Blue Hills Regional School District Committee, 3 MLC 1613 (1977); City of Boston, 3 MLC 1450 (1977).

An employer must bargain over the reassignment of non-unit personnel which has the effect of displacing bargaining unit members. However, it is not a unilateral change to use civilians within the police department in bureaus where there was a history of the use of civilians and there was no calculated displacement of unit members. City of Boston Police Department, 4 MLC 1153 (1977); City of Boston, MUP-2690, 4 MLC (H.O., 1978).

Mere reiteration of a previously existing policy which has not required strict enforcement in the past may not constitute a unilateral change. Town of Arlington, 2 MLC 1266 (H.O., 1975), reversed in part on other grounds, 4 MLC 1296 (1977); City of Worcester, 4 MLC 1317 (H.O., 1977). Also, there was no violation where an employer attempted to enforce existing rules more effectively and there was no resulting substantial and significant change in past practice. City of Leominister, 3 MLC 1579 (1977); nor was there a violation where a mere change in the mechanics of employee evaluation did not change the standards for evaluation. City of Worcester, 4 MLC 1317 (H.O., 1977). The introduction of a written employee evaluation form, without imposition of new standards of performance, is an acceptable change in supervisory technique. Town of Arlington, 4 MLC 1614 (H.O., 1977).

c.) Waiver of Right to Bargain

If a union fails to object to a unilateral change in a timely fashion, it may waive its right to bargain about the matter. City of Lowell, 3 MLC 1001 (1976); Town of North Andover, 1 MLC 1103 (1974); Revere School Committee, 4 MLC 1187 (1977); Boston School Committee, 4 MLC 1324 (H.O., 1977). A waiver must, however, be knowing, conscious, and unequivocal. Melrose School Committee, 3 MLC 1299 (1976). A broad management rights clause is not an effective waiver. City of Boston, 3 MLC 1450 (1977); Town of North Andover, 1 MLC 1103 (1974); City of Everett, 2 MLC 1471 (1976). Neither would a "zipper clause" allow a unilateral change unless the bargaining history of the parties shows that the issue involved in the change was specifically discussed and appears in the final contract. City of Cambridge, 4 MLC 1620 (H.O., 1977); Ayer School Committee, 4 MLC 1027 (H.O. aff'd 4 MLC 1418 (1977).

A union which files a complaint with the Commission after protesting a unilateral change is not deemed to have waived the right to bargain merely because it failed to formally request bargaining. City of Everett, 2 MLC 1471 (1976).

A formal bargaining request need not be filed if to do so would be futile. Norwood School Committee, 4 MLC 1467 (H.O., 1977). Nor has the union waived its right because it failed to remedy the unilateral change in subsequent contract negotiations, since the union is entitled to bargain on an issue without being presented with a fait accompli. City of Cambridge, 4 MLC 1620 (H.O., 1977). The filing of a grievance by the union is adequate notice of the union's desire to negotiate. Lawrence School Committee, 4 MLC 1422 (H.O., 1977).

VII. Collective Bargaining Agreement; Writing Requirement; Terms; Requests For Appropriations

Section 7(a) of the Law provides that agreements must be reduced to writing and may not exceed a term of three years. An agreement which automatically continues beyond three years unless either party proposes to change it does not violate Section 7. By not proposing changes the parties are, in effect, agreeing to a new contract. Town of Burlington, 3 MLC 1440 (1977).

Within 30 days after an agreement is executed, the employer is required by Section 7 of the Law to submit to the appropriate legislative body a request for an appropriation necessary to fund the contractual cost items. If the legislative body rejects the request, the cost items shall be returned to the parties for further bargaining. Town of Franklin, 1 MLC 1026 (1974). Special statutory provisions are in effect for employers and the Governor when the employer is a board of trustees of community colleges, state colleges, state universities, the judiciary or the State Lottery Commission. See Section 7(c) of the Law.

VIII. Final And Binding Arbitration

A. Threshold Questions

Section 8 of the Law states that parties may include in a written agreement a grievance procedure culminating in binding arbitration. If there is no binding grievance arbitration by agreement, it may be ordered by the Commission under Section 8 of the Law.

When requested to do so by an employer or employee organization, the Commission may order binding grievance arbitration upon finding two threshold facts. First, the parties must have executed a written agreement which does not provide for the resolution of grievances through binding arbitration. Second, there must be a dispute concerning the interpretation or application of the written agreement. Easthampton School Committee, 4 MLC 1598 (1977); Town of Shrewsbury, 4 MLC 1441 (1977); Town of Wayland, 3 MLC 1367 (1977); Town of Athol, 4 MLC 1132 (1977).

In contrast, where the parties have agreed contractually on binding arbitration of the dispute in question an order under Section 8 of the Law is not appropriate. Town of East Longmeadow, 3 MLC 1046 (1976). In that case, the party seeking to enforce the contractual arbitration provision should proceed in Superior Court pursuant to G.L. Chapter 150C. See Town of Danvers, 1 MLC 1231 (1974).

A Section 8 order is appropriate even though the collective bargaining agreement has expired subsequent to the grievance. Board of Trustees of State Colleges (Worcester State College), 1 MLC 1474 (1975). But where there is no written contract in effect at the time of the alleged contract breach, a Section 8 order will not issue. Town of East Longmeadow, 3 MLC 1046 (1976).

If an employee elects to arbitrate a grievance involving suspension, dismissal, removal or termination, arbitration is the exclusive procedure available to the employee. Where, however, the grievance does not involve one of those issues, an employee organization may obtain a Section 8 order even though the aggrieved employee is pursuing alternative remedies. Board of Trustees of State Colleges (Worcester State College), 1 MLC 1474 (1975). See also Town of Wayland, 3 MLC 1367 (1977).

When it receives a request for binding arbitration, the Commission does not itself interpret the collective bargaining agreement. The Commission will order arbitration so long as the dispute is "arguably arbitrable". Town of Shrewsbury, 4 MLC 1441 (1977); Board of Trustees of State Colleges (Worcester State College), 1 MLC 1474 (1974). Where no arbitrator could reasonably concur with the petitioner's position, however, the Commission will not order futile arbitration. Sturbridge School Committee, 1 MLC 1381 (1975).

B. Procedure

Upon receipt of a request for binding arbitration, the Commission notifies all interested parties. A period of ten days from receipt of the notification is allowed for an opposing party to set forth in writing any objections to the request. If the party fails to submit objections and the Commission determines that an order for binding arbitration should issue, such orders will not provide for a show-cause hearing. If objections to the request for binding arbitration are timely filed, the Commission shall determine on a case-by-case basis whether an order for binding arbitration will issue and, if an order issues, whether it will provide for a show cause hearing. Board of Trustees of State Colleges (Fitchburg State College), 2 MLC 1344 (1976).

Section 8 proceedings are administrative rather than adjudicatory, and arguments based on burden of proof are inappropriate. If a Section 8 application is in proper form and appears regular, the order will issue. Board of Trustees (Fitchburg State College), 2 MLC 1344 (1976).

C. Refusal to Participate or Comply with Award

Under sections 10(a)(6) and 10(b)(3), it is a prohibited practice for employers or employee organizations to refuse to participate in good faith in the grievance procedure agreed to by the parties or arbitration ordered by the Commission. The continued refusal by a public employer to comply with the procedural grievance arbitration provisions of a duly executed contract constitutes a per se violation of its duty to participate in good faith in those procedures. City of Chelsea, 3 MLC 1168 (H.O., 1976) aff'd 3 MLC 1384 (1977).

Where an employer refuses to comply with an arbitrator's unambiguous award and forces other employees to file parallel grievances, the employer violates Section 10(a)(6) of the Law. The employer may contend in good faith, however, that the fact situation in the second grievance is not covered by the earlier award. City of Boston, 2 MLC 1331 (1976).

D. Waiver

An employee organization may, with regard to a specific and narrow class of disputes, expressly waive its Section 8 right to request binding arbitration. Worcester School Committee, 2 MLC 1174 (1975). The waiver must be clear and unmistakable. The absence of a provision for binding arbitration in the collective bargaining agreement does not constitute a waiver of the right to a Section 8 order. Town of Athol, 4 MLC 1137 (1977).

The filing of a prohibited practice charge does not in itself signify waiver. Issues as to whether arbitration has been foreclosed due to procedural deficiencies in the claim are left to resolution by the arbitrator. Town of Shrewsbury, 4 MLC 1441 (1977).

IX. Impasse Procedures

Section 9 establishes a mechanism for the resolution of bargaining impasses through mediation, fact-finding, and voluntary interest arbitration. Under sections 10(a)(6) and 10(b)(3), it is a prohibited practice to refuse to participate in good faith in the statutory impasse procedures. "Last best offer" arbitration for police and fire fighters is covered by Chapter 347 of the Acts of 1977.

The consistent failure of a party to attend mediation sessions after receiving timely notice of such meetings constitutes a per se violation of the Law. Town of Rockland, 3 MLC 1359 (H.O., 1977). Entering mediation with the intent to bargain anew on all items to be negotiated, including those for which previous agreement existed, is evidence of a lack of good faith. Middlesex County Commissioners, 3 MLC 1594 (1977).

The withdrawal of an improved offer prior to fact-finding and retreat to a less favorable position is evidence of bad faith. Town of Saugus, 2 MLC 1480 (1976). In police and fire fighter cases, insistence on submission to the fact-finder of non-mandatory subjects of bargaining is, absent consent of the other party, a breach of the duty to participate in good faith in fact-finding. Local 1099, International Association of Fire Fighters, 2 MLC 1238 (1975). Egregious misrepresentation of facts to the fact-finder may constitute a prohibited practice. Factors which may militate against such a finding include: complexity of the issues; commission of a similar error by the complaining party; opportunity for rebuttal; and absence of reliance by the fact-finder upon the misrepresentation. Local 1099, International Association of Fire Fighters, 2 MLC 1238 (1975).

The fact-finding procedure should be a fluid one inasmuch as it is designed to encourage settlement. Therefore, mere alteration of proposals during the fact-finding process is not a prohibited practice. Local 1099, International Association of Fire Fighters, 2 MLC 1238 (1975). Neither is it a breach of duty to participate in good faith to release information to the media, at its request, if the release neither frustrates fact-finding nor contributes significantly to a deadlock of negotiations. Local 1099, IAFF, 2 MLC 1238 (1975). This assumes, of course, that the parties had not established ground rules concerning news releases during negotiations. Town of Maynard, 2 MLC 1141 (H.O., 1975) aff'd 2 MLC 1281 (1976).

Neither party to an impasse is under an obligation to use the statutory impasse mechanisms. Should a party decline to use the procedures, however, it cannot indefinitely refuse to resume negotiations on the ground of impasse. Rather, there is a duty to resume bargaining when presented with a good faith request to do so. Lawrence School Committee, 3 MLC 1304 (1976).

IX-A Strikes

Section 9A(a) prohibits public employees and employee organizations from striking or inducing or encouraging work stoppages by public employees. Under MLRC Rule 16.__ when a strike occurs or is about to occur a public employer may petition for a strike investigation. The employer must also serve a copy of the petition on an officer or representative of the employee organization and file an affidavit of service with the Commission. The petition must identify the parties allegedly in violation of Section 9A(a), and must contain certain other information needed by the Commission to carry out an investigation. Upon receipt of a proper petition, the Commission gives notice by telegram or other prompt means to interested parties. Pursuant to this notice, the Commission holds an investigatory proceeding at its offices. This proceeding is usually held within a day of the filing of the petition.

While the formal presentation of sworn testimony is often not necessary at the investigation, the petition must present facts sufficient for the Commission to conclude that a violation of Section 9A(a) has occurred. Alliance, AFSCME/SEIU, AFL-CIO, SI-29 (1976). Where material facts are disputed, the Commission agent may call for sworn testimony. See Taunton Municipal Lighting Plant Commission, 3 MLC 1153 (1976).

The statute prohibits two types of conduct. First, no public employee or employee organization shall engage in a strike. See Commonwealth of Massachusetts, SI-29 (1976) and the other cases cited herein where public employees refused to report to work. However, where an existing collective bargaining agreement specifically authorizes employees to refuse to work overtime, such refusal is not a strike within the definition of that term in section 1 of the Law. In City of Beverly, 3 MLC 1229 (1976) the Commission found no violation of section 9A(a) when police officers refused overtime and their collective bargaining agreement specified that overtime was voluntary and the refused overtime was non-emergency in nature. Where overtime is required by contract or is emergency in nature, concerted refusal to work such overtime constitutes a violation of section 9A(a). Town of Arlington, 3 MLC 1276 (1976); City of Medford, SI-43 (1976).

The second aspect of section 9A(a) prohibits public employees or employee organizations from inducing, encouraging or condoning a strike. The Commission has required evidence that the union was participating in the strike. Southeastern Regional School District, SI-54 (1977).

Recently, however, the Supreme Judicial Court held that union officials have an affirmative duty to oppose a strike and to insure union compliance with an injunction. Labor Relations Commission v. BTU Local 66, 1977 Mass. Adv. Sh. 2738, 371 N.E. 2d 761. The union's participation in picketing or demonstrations during a work stoppage is evidence of inducing and encouraging a strike. City of Chelsea, SI-33 (1976); City of Newton, SI-26 (1976). The union will be held responsible for the actions of its officers and leaders. Franklin School Committee, SI-56 (1977). The Commission may infer union inducement and condonation where the work stoppage was 90 per cent effective, union officers failed to appear for work, and the strike "started and stopped on cue, clearly indicating organization and direction", all of which occurred during a period of labor unrest. City of New Bedford, 4 MLC 1001 (1977). Refusals to work in sympathy with other employees engaged in a strike is a violation of the Law. City of Newton, SI-27 (1976); University of Massachusetts Medical School, SI-30 (1976).

If it concludes that a violation of Section 9A(a) has occurred, the Commission will issue an interim order directing the end of the work stoppage. The Commission's interim order may also address some of the issues underlying the work stoppage, especially where related prohibited practice charges are involved, and require the parties to participate in accelerated bargaining, mediation, or factfinding. Commonwealth of Massachusetts, SI-29 (1976), (bargaining and mediation); Southeastern Regional School District, SI-54 (1977), (expedited factfinding). The Commission, in the absence of prohibited labor practices, lacks the authority to order binding arbitration of the dispute. Director, Division of Employee Relations v. Labor Relations Commission, 1976 Mass. Adv. Sh. 1045, 346 N.E. 2d 852.

X. Prohibited Practices

A. Employer Prohibited Practices

1) Section 10(a)(1) makes it unlawful to interfere with, restrain or coerce an employee in the exercise of any right under the Law. Since the typical Section 10(a)(1) violation occurs when an employee's rights under Section 2 are infringed, the reader is referred to the discussion in part II of this Summary. Additionally, Section 10(a)(1) violations arise in the refusal to bargain context since an employer's failure to negotiate in good faith interferes with, restrains and coerces employees in their right to bargain collectively through their chosen representatives. (See part

VI, above. Surveillance of union activities is sufficient interference to constitute a violation of Section 10(a)(1). Plymouth County House of Correction, 4 MLC 1555 (1977).

Any action against an employee in retaliation for filing a grievance under the collective bargaining agreement is a violation of Section 10(a)(1), since the filing of grievances is a protected union activity. It is no defense to the employer that the employee's grievance was factually incorrect. City of Worcester, 4 MLC 1684 (H.O., 1977).

2) Section 10(a)(2) makes it a prohibited practice to dominate, interfere or assist in the formation, existence or administration of any employee organization. To enter a stipulation with a challenging union that the incumbent's contract would be continued while the challenger's decertification petition was pending was a prohibited practice, even when executed in the interest of maintaining labor stability. City of Worcester, 1 MLC 1265 (1975). An employer was found to be in violation of Section 10(a)(2) where it refused to bargain over certain subjects with a union representing one unit of employees, but bargained over the same subjects with a different union representing another unit of employees. Town of Natick, 2 MLC 1149 (H.O., 1975).

3) Section 10(a)(3) provides that an employer may not discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization. This provision extends to all concerted, protected activity. Town of Somerset, 3 MLC 1618 (1977). The employer's motivation is key and an employer's action will be viewed as discriminatory if it is motivated either in whole or in part by an employee's protected activity. Commonwealth of Massachusetts (Mass. Rehabilitation Commission), 2 MLC 1400 (1976); Ronald J. Murphy, 1 MLC 1271 (1975).

The burden of establishing a violation by a preponderance of the evidence rests upon the charging party. Town of Dennis, 3 MLC 1014 (1976); Minuteman Regional School District, 2 MLC 1435 (1976). In order to establish a prima facie case, the charging party must offer evidence tending to prove the following essential elements: union or other protected activity; employer knowledge of the activity; adverse action taken by the employer; employer motivation to penalize or discourage union activity, Town of Somerset, 3 MLC 1618 (1977); County of Worcester, 3 MLC 1154 (1976); Town of Tewksbury, 2 MLC 1158 (1975); Town of Sharon, 2 MLC 1205 (H.O., 1975).

Employer knowledge of union activity may be inferred from the surrounding circumstances, particularly where the "small plant doctrine" can be applied. Plymouth County House of Correction and Jail, 4 MLC 1555 (1977).

The burden of establishing improper motivation can be satisfied by circumstantial evidence and the reasonable inferences drawn therefrom. Town of Somerset, 3 MLC 1618 (1977); Town of Sharon, 2 MLC 1205 (H.O., 1975); Harwich School Committee, 2 MLC 1095 (1975). Factors considered in determining the existence of improper motivation include: timing of the discharge coincidentally with the protected activity, Ronald J. Murphy, 1 MLC 1271 (1975); Town of Somerset, 3 MLC 1618 (1977); visibility of the employee in his or her support of the union, Town of Wareham, 3 MLC 1334 (1976); abruptness of the discharge and the employer's general hostility toward the union or toward concerted activity, Ronald J. Murphy,

1 MLC 1271 (1975); Town of Halifax, 1 MLC 1486 (1975); the employer's anti-union remarks, inconsistent or shifting reasons for the discharge or other discipline, Town of Hopkinton, 4 MLC 1072 (H.O., 1977), aff'd 4 MLC ___ (1978); St. Elizabeth's Hospital v. Labor Relations Commission, 321 N.E.2d 837, 1 MLC 1248 (1975); sudden resurrection of previously condoned transgressions, Town of Hopkinton, 4 MLC 1072 (H.O., 1977), Mt. Wachusett Community College, 1 MLC 1496 1975); staleness of charges, Town of Somerset, 3 MLC 1618 (1977); surveillance and compilation of information concerning the employee, Town of Sharon, 2 MLC 1205 (H.O., 1975); comparative treatment and triviality of reasons for discharge, Town of Hopkinton, 4 MLC 1072 (H.O., 1977) aff'd 4 MLC __ (1978); Town of Wareham, 3 MLC 1334 (1976); 3 MLC 1334 (1976); departure from established procedures for disciplinary action, Town of Somerset, 3 MLC 1618 (1977); failure to warn the employee prior to discharge or other disciplinary action Town of Somerset, 3 MLC 1618(1977); explicit or inferred hostility and threatening behavior towards employees who have filed grievances, Department of Public Safety, 4 MLC 1110 (H.O., 1977), see generally City of Fitchburg, 2 MLC 1123 (1975); Harwich School Committee, 2 MLC 1095 (1975). However, the mere coincidence in time between the employee's union activities and his or her discharge is not sufficient to raise an inference of knowledge on the part of the employer of the employee's union activity. Lexington Taxi Corp., 4 MLC 1677 (1978).

While pro-union concerted activities will not insulate an employee from discharge for "cause", it is well-settled that the existence of "cause" for the employer's action does not justify it where the preponderence of the evidence demonstrates that anti-union considerations were involved. Town of Halifax, 1 MLC 1486 (1975); Town of Wareham, 2 MLC 1547 (1976). In the absence of proof of improper motive the Commission will not question the personnel policies and practices of a public employer. Town of Tewksbury, 2 MLC 1158 (1975); Danvers School Committee, 4 MLC 1530 (1977).

The inference that one employee is unlawfully discharged is not necessarily rebutted by evidence that the employer did not discriminate against another employee who is also actively engaged in protected activity. Town of Halifax, 1 MLC 1486 (1975). It is not discriminatory for an employer to transfer an employee to another shift to permit the employee to perform a more skilled job commensurate with his or her skills. County of Worcester, 3 MLC 1154 (1976). Termination of employees under a comparative rating system was held to be lawful even though the employees were active in union affairs, where there was an absence of discrimination in the rating process. Town of Dennis, 3 MLC 1014 (1976). A Section 10(a)(3) violation has been found, however, when an employer conditioned promotion on an employee's non-union status. Town of Swansea, 3 MLC 1484 (1977).

4) Section 10(a)(4) makes it a prohibited practice for a public employer to discharge or otherwise discriminate against an employee because he or she has signed or filed an affidavit, petition or complaint, given testimony under the Law, or formed, joined or chosen to be represented by an employee organization. City of Boston, 4 MLC 1033 (1977). In Town of Wareham, 3 MLC 1334 (1976), the Board of Sewer Commissioners was held to be in violation of Section 10(a)(4) for discharging one employee upon his stated intention of pursuing redress of his grievances and another for giving testimony at the Commission.

The Commission considers the protection of Section 10(a)(4) so critical to its ability to investigate complaints and keep channels of information open that its protection has been interpreted to extend to employees not defined and covered by Section 1 as well as those employees covered by Section 1. Michael J. Curley, 4 MLC 1124 (1977).

5) Section 10(a)(5) provides that it is a prohibited practice for an employer to refuse to bargain in good faith as required in Section 6. This duty to bargain in good faith is discussed under Section VI above. Section 10(a)(6) requires that employers participate in good faith mediation, fact-finding, and arbitration. It is discussed in Sections VIII and IX above.

B. Union Prohibited Practices

1) Section 10(b)(1), the union counterpart of Section 10(a)(1), makes it a prohibited practice for an employee organization to interfere with, restrain, or coerce any employer or employee in the exercise of any right guaranteed under the Law. Section 10(b)(1), in relation to Section 5, makes it a prohibited practice for a union to fail to represent the interests of all employees in the bargaining unit without discrimination and without regard to union membership. See Section V above; Local 342, International Brotherhood of Police Officers, 2 MLC 1186 (1975).

2) Under Section 10(b)(2) it is a prohibited practice for a union to refuse to bargain in good faith. See Section VI above; Local 841, International Association of Firefighters, 3 MLC 1378 (1977); Local 195, Independent Public Employees Association, 3 MLC 1587 (H.O., 1977); Town of Andover, 4 MLC 1081 (1977). Where the Board of Selectmen suggest that the union petition the town meeting for an increase in insurance benefits, the union did not bargain in bad faith when it presented its position directly to the town meeting. Town of Leicester, 4 MLC 1264 (H.O., 1977), aff'd 4 MLC 1666 (1977); Leicester Police Association, 4 MLC 1261 (1977).

3) Section 10(b)(3) is the corollary to the Section 10(a)(6) requirement of good faith participation in mediation, fact-finding, and arbitration. See Sections VIII and IX above.

XI. Commission Procedures and Remedial Authority

Section 11 of the Law and MLRC Rule 15.00 delineate Commission procedures and remedial authority in prohibited practice cases. Section 4 of the Law and MLRC Rule 14.00 govern the procedure in representation cases.

A. Procedures

MLRC Rule 15.02 establishes a six-month statute of limitations on the filing of prohibited practice charges. A charge must be filed within six months of the alleged violation or within six months from the date the violation became known or should have become known to the charging party. Town of Wayland, 3 MLC 1724 (H.O., 1977). Where a violation is continuing, a charge will not be barred because it is filed more than six months after the initial violation. Local 495, SEIU, 3 MLC 1501 (1977).

1) Charges and Complaints

A charge is the initial written filing a party makes to the Commission. MLRC Rule 11.07. After investigation, the Commission determines whether a hearing is warranted and specifies the allegations in a complaint. The allegations in a charge need not conform to the technical rules of pleading. A charge or complaint is legally sufficient if it enables the respondent to understand the issues raised so that it can prepare its defense. Burlington School Committee, 1 MLC 1179 (1974). Where there are no facts which could support a claim, a hearing is not required and the Commission has allowed a motion for summary judgment. City of Cambridge, 4 MLC 1044 (1977). A party may not litigate in an unfair labor practice proceeding issues previously litigated in a representation proceeding between the same parties.

City of Cambridge, 4 MLC 1055 (1977), nor may a party relitigate representation issues when it has failed to appeal a hearing officer's decision in a representation case. City of Worcester, 4 MLC 1373 (1977).

2) Expedited Hearing

Sections 4 and 11 of the Law provide that a hearing may be designated as an expedited hearing. Designed to relieve the agency's crowded docket, these hearings are conducted by the Commission members or agents and are recorded by tape rather than stenographically. The Commission has redesignated an expedited hearing as a formal hearing upon an uncontested oral motion by a party. Board of Trustees of University of Massachusetts, 2 MLC 1315 (1976).

The Commission's hearing officers are not bound by the technical rules of evidence prevailing in the courts. Rulings made by hearing officers during expedited hearings may not be appealed to the full Commission prior to the conclusion of the case before the hearing officer. Somerville School Committee, 2 MLC 1335 (1976), except under extraordinary circumstances. See MLRC Rule 13.02(4).

3) Review of Hearing Officer's Decision

A hearing officer's decision becomes final and binding unless a review by the Commission is requested within ten (10) days. A party who fails to appeal from a hearing officer's decision cannot raise the same issues between the same parties without changed circumstances when that issue has been fully and fairly litigated before the hearing officer. City of Worcester, 4 MLC 1373 (1977). The Commission has adopted the following procedures for its review of a hearing officer's decision.

> The mere filing of a Notice of Appeal of a Hearing Officer's decision does not entitle the appellant to de novo review of the entire proceedings. If the appellant claims that errors of law were made by the Hearing Officer in reaching his or her decision, the timely filing of an appeal suffices to bring these issues before the Commission. Supplementary statements containing legal arguments on specific points will, of course, facilitate the Commission's deliberations and are always carefully considered.
>
> If the appellant claims that the Hearing Officer erred in fact-finding, however, it must do more than simply file a general appeal to the Commission. In the absence of the parties specifically directing the Commission's attention to alleged incorrect findings of fact, the Commission will accept the Hearing Officer's fact findings and limit its review to the Hearing Officer's conclusions of law. Town of Dedham, 3 MLC 1332 (1976). See also Town of Swansea, 4 MLC 1527 (1977).

The Commission will exercise its discretion to reopen the record only under extraordinary circumstances. Evidence available to the moving party at the time of the original hearing has not been admitted upon such a motion. City of Everett,

2 MLC 1471 (1976). A party's due process rights are not violated because the Commission reviews sound recordings of an Expedited Hearing instead of written records. The recordings must, however, be sufficiently clear to make the testimony of the witnesses intelligible. Town of Sharon, 3 MLC 1052 (1976).

B. Deferral to Arbitration

When a complaint raises issues that were decided or may be decided through fair and regular arbitration proceedings agreed to by the parties, and where the decision is not repugnant to the Law or policy, the Commission will defer to the arbitrator's decision. The Commission's policy is designed to favor arbitration, and to discourage forum shopping and relitigation of issues. This deferral policy will be applied in prohibited practice cases and, where appropriate, in representation cases. Boston School Committee, 1 MLC 1287 (1975); City of Boston, 1 MLC 1229 (1974); Cohasset School Committee, MUP-419 (6/19/73).

Even though evaluative decisions themselves may be within management's non-delegable rights, a school committee's failure to follow the procedures for such evaluation set forth in the collective bargaining agreement has been held to be subject to arbitral enforcement. School Committee of West Springfield v. Korbut, 1977 Mass. Adv. Sh. 2548, 369 N.E.2d 1148.

Where both sides submit non-mandatory bargaining subjects to voluntary interest arbitration, they are bound by the arbitrator's decision which is enforceable in court. However, where educational policy is involved to a significant degree, the issue should be excluded from interest arbitration even if the school committee consents. This determination must be left to a case-by-case resolution. School Committee of Boston v. B.T.U., Local 66, 1977 Mass. Adv. Sh. 2738, 371 N.E.2d 761.

Where arbitration included a decision on a permissive subject and invaded the legitimate management prerogative on employee assignments, that portion of the award was severed and voided from the valid part of the arbitrator's decision. Harpin v. City of Marlborough, Civil Action No. 77-1294, (Middlesex Super. Ct. 8/2/77).

C. Remedial Powers

The Commission has broad powers to order relief if it finds that a prohibited practice has been committed. It may issue cease and desist orders, and it may order reinstatement with full back pay, preservation of records necessary to determine back pay awards, and posting of notices. City of Boston, 1 MLC 1271 (1975).

1) Back Pay Awards

The Commission conducts supplemental proceedings to determine the amount of back pay due to a discharged employee. Back pay is determined by using the following formula: Net back pay= gross back pay - (interim earnings - expenses). In applying this formula, gross pay is to include such items as overtime, bonuses, vacation pay, holiday pay, retirement benefits, insurance benefits and tips. Interim

earnings includes only income attributable to new employment. Seven per cent interest may be added to the back pay award. Plymouth County House of Correction and Jail, 4 MLC 1555 (1977); Lawrence School Committee, 4 MLC 1422 (H.O., 1977). The employee's burden is merely to establish gross pay. The employer must establish interim earnings and other set-offs. The employee must mitigate damages by seeking suitable employment. Town of Townsend, 1 MLC 1450 (H.O., 1975). The Commission may estimate back pay when exact computation is not possible, as long as there is sufficient evidence upon which to base a reasoned conclusion. The employer waives the right to contest any figures if it does not appear at the hearing on this matter. Town of Townsend, 1 MLC 1450 (H.O., 1975).

Where an employee was unlawfully discharged one day before he would become a permanent civil service employee, the Commission ordered the employer to rehire the employee and grant him immediate status as a permanent employee. City of Boston, 3 MLC 1101 (1976). The Commission has also ordered the employer to remove from an unlawfully discharged employee's personnel records any reference to the discharge. City of Boston, 3 MLC 1101 (1976).

2) Bargaining Orders

In cases where there has been a refusal to bargain by either employers or unions the Commission ordinarily issues a bargaining order. Where the full consequences of an employer's refusal to bargain would not be completely remedied by a bargaining order, compensatory relief is appropriate. Middlesex County Commissioners, 3 MLC 1594 (1977).

3) Status Quo Ante

Where the Commission finds that the employer has unilaterally altered wages, hours, terms or conditions of employment, the usual remedy has been to order a return to the status quo ante, along with a bargaining order. Town of Marblehead, 1 MLC 1140(1974); City of Fitchburg, 2 MLC 1123 (1976). The Commission has also issued a make whole order directing a city to compensate fire fighters at the rate of ten per cent of their ordinary wages for the hours they were required to perform floor patrol under an unlawful unilaterally instituted change in working conditions. City of Everett, 2 MLC 1471 (1975).

The Commission has ordered an employer to extend to unit employees the benefits contained in proposals that had been initialed by both negotiators and later repudiated by the employer when the parties failed to agree upon other items. Middlesex County Commissioners, 3 MLC 1594 (1977). Similarly, where an employer violated Section 10(a)(5) by withdrawing a tentative agreement after the union has already made concessions to reach that agreement, a hearing officer ordered the employer to return to the bargaining table on the basis of the status quo before the tentative agreement was withdrawn by the employer. Spencer-East Brookfield Regional School Committee, 3 MLC 1400 (H.O., 1977). In Boston School Committee, 1 MLC 1287 (1975), the employer was ordered to pay to the union the dues and agency service fees that normally would have accrued to the union absent the employer's unlawful refusal to bargain. In an analogous situation, a union was ordered to return to a unit employee, if she tendered her resignation from the union, the dues she had paid after she had been unlawfully coerced to join the union, Local 285, SEIU, 3 MLC 1646 (1977). An employer has been directed to compensate an employee organization for the union dues which would have been deducted if unlawfully discharged employees had remained on the payroll. Plymouth County House of Correction and Jail, 4 MLC 1555 (1977). The employer was similarly required to reimburse the dischargees for "out of pocket" expenses incurred during the litigation. Plymouth County, supra.

4) Other Forms of Relief

Recently, a hearing officer's order of affirmative relief included a requirement that the mayor introduce an amendment to cure a local ordinance which was the focus of the employer's bad faith conduct. The Commission affirmed the order, noting that the remedy did not force the employer to accept any substantive contract terms, but merely required the mayor to make a proposal before the local law-making body. City of Springfield, 4 MLC 1134 (H.O., 1977); aff'd 4 MLC 1517 (1977).

XII. Agency Service Fee

Section 12 of the Law provides that public employees may be charged an agency fee as a condition of employment if the fee is required by a negotiated collective bargaining agreement ratified by a vote open to all members of the bargaining unit. The fee must be proportional to the costs of negotiating and administering the collective bargaining agreement. The Commission has adopted regulations requiring financial disclosure by unions charging an agency service fee to non-members and mandating that notice be given to all employees of votes to ratify agency fee agreements. Non-members may not be required to defray expenses for political or charitable contributions; social activities; educational programs unrelated to collective bargaining; fines or penalties assessed for illegal activities; organizing costs; or for health insurance, retirement or pension benefits. MLRC Rules 17.01 to .05. Gloucester Teachers Association, 4 MLC 1548 (H.O., 1977). The effect of c.903 of the Acts of 1977 (modifying Section 12 of the Law) on the Commission's Rules has not been determined.

CHART 1

HOW DID PUBLIC EMPLOYEE BARGAINING EVOLVE?

1935 Wagner Act (National Labor Relations Act)
Gave collective bargaining rights to private sector employees in interstate commerce.

1937 Massachusetts passes Chapter 150A, "Baby Wagner Act," extending bargaining rights to private sector employees within the commonwealth; Labor Relations Commission established.

1958 All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.

1960 Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the matter and method of bargaining Chapter 40, Section 4C.

1964 State employees given the right to bargain with respect to working conditions (but not wages). Chapter 149, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations that bargaining took place.

1965 Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment. Chapter 149, Sections 178G-N. This repealed Chapter 40, Section 4C.

1969 Mendonca Commission established by legislature to revise public employee bargaining laws.

1973 All public employees--state and municipal--extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.

1974 Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission; modify union unfair labor practices; modify standards for exclusion of managerial employees.

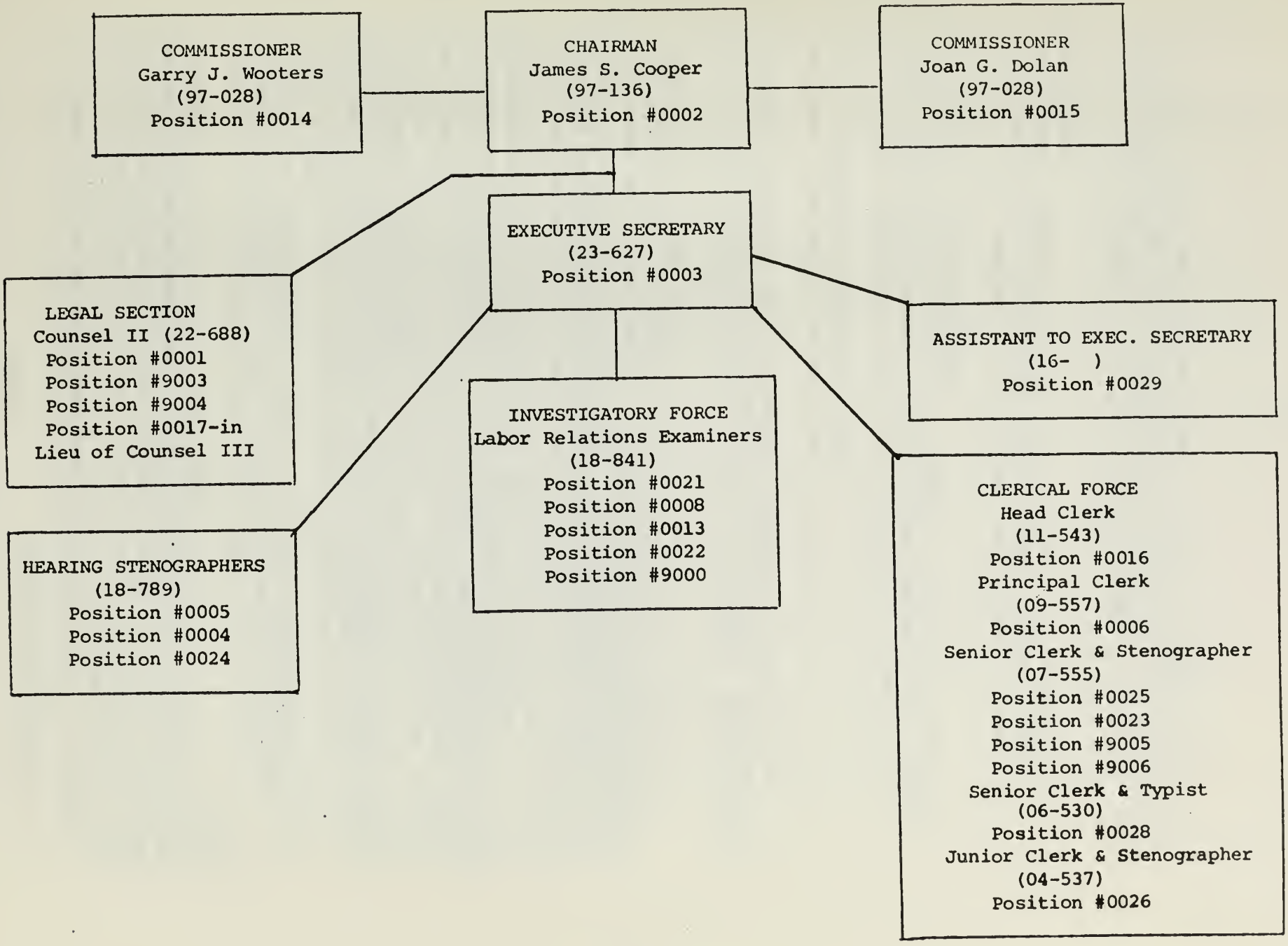
1975 MLRC issued standards for Appropriate Bargaining Units affecting fifty five thousand state employees in more than two thousand job classifications. Ten statewide units were created - five non-professional and five professional.

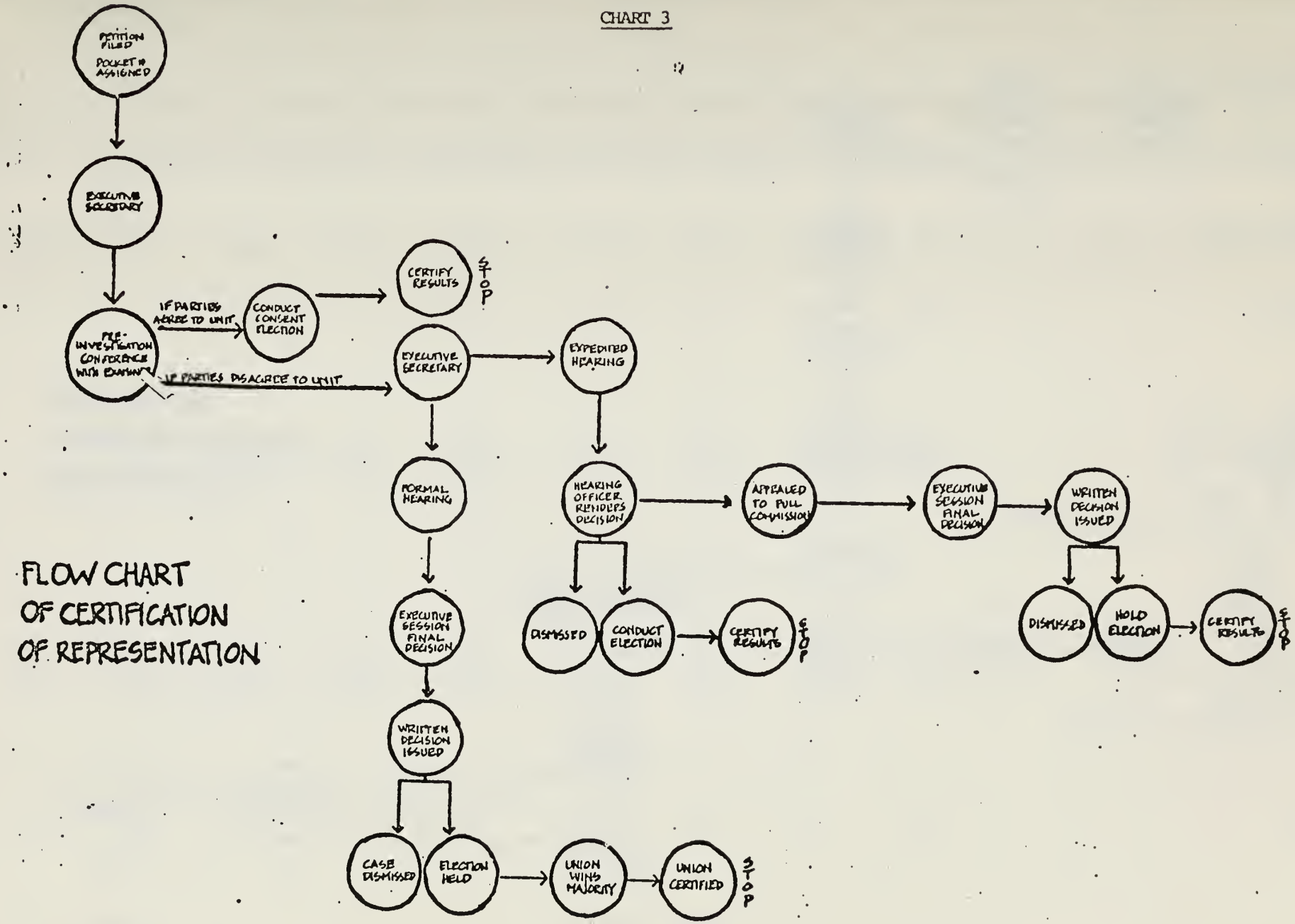
CHART 2

COMMONWEALTH OF MASSACHUSETTS

(Present Structure as of July 18, 197

LABOR RELATIONS COMMISSION





FLOW CHART OF CERTIFICATION OF REPRESENTATION

FLOW CHART OF PROHIBITED PRACTICE COMPLAINTS

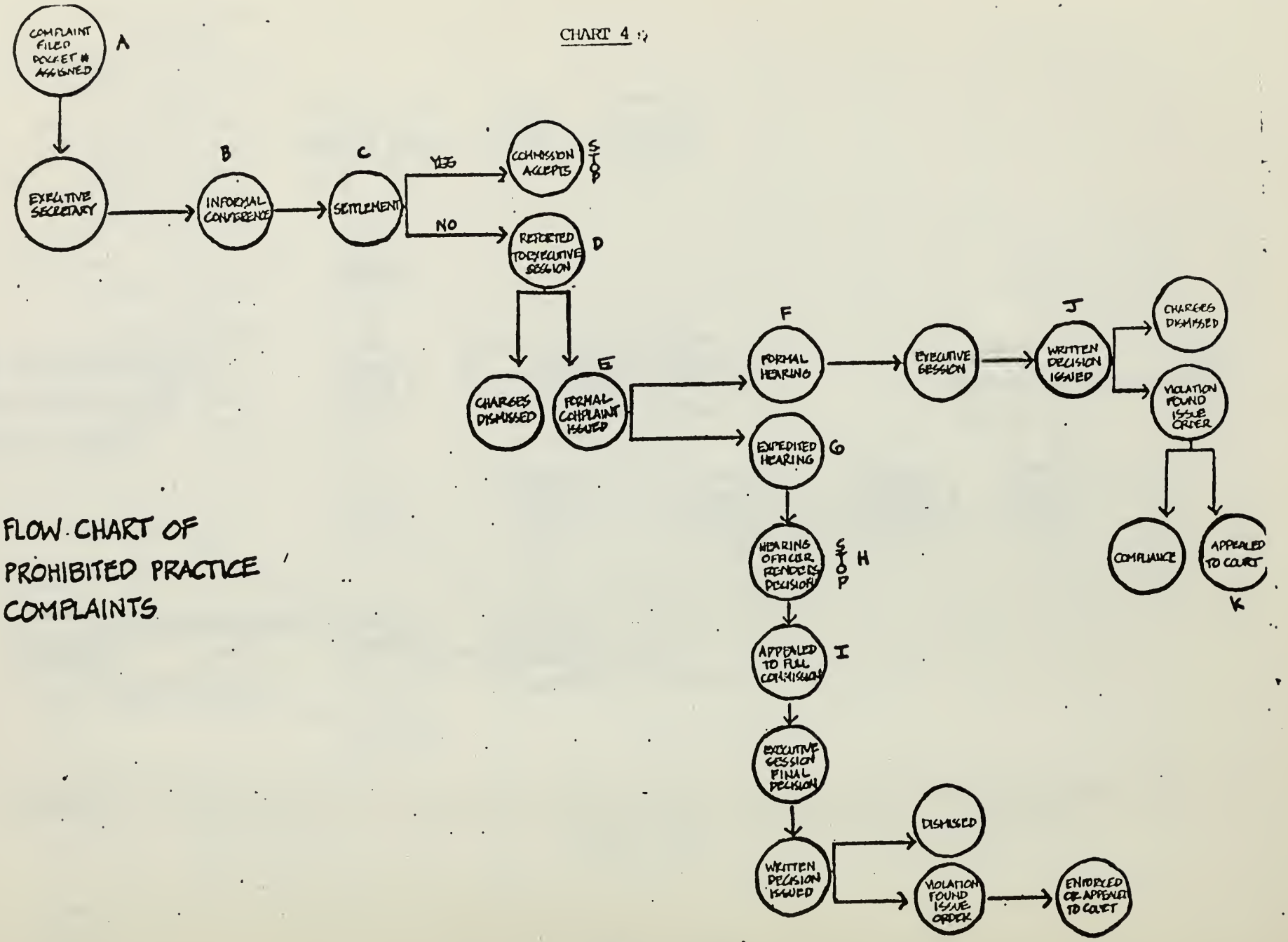


TABLE 1

TOTAL FILINGS

YEAR	78	77	76	75*	74*	73	72	71	66
Representation Cases									
(TOTAL)	231	249	304	400	297	287	299	201	144
Public	207	228	272	379	229	238	245	167	78
Private	24	21	32	21	68	49	54	34	66
Prohibited Practice Cases									
(TOTAL)	554	426	390	398	276	277	177	110	
Public	516	393	350	375	233	244	137	94	
Private	38	33	40	23	43	33	40	16	
Other**	83	26	42	17					
GRAND TOTAL	868	701	736	815	573	564	476	311	144

*Note: A moratorium on the processing of most state representation petitions was declared Ocotober 10, 1974-March 3, 1975 and a moratorium for all petitions took place in May-July 1, 1974.

**Strikes investigations and requests for binding arbitration and clarification of bargaining unit petitions.

TABLE 2

BREAKDOWN OF TOTAL FILINGS

CODE	MEANING	78	77	76
MCR:	Petition by or on behalf of Municipal Employees seeking certification or decertification of an Employee Organization.	195	156	194
CR:	Petition by or on behalf of Private Employees seeking certification or decertification of an Employee Organization.	24	21	32
SCR:	Petition by or on behalf of Employees of the Commonwealth seeking certification or decertification of an Employee Organization	12	10	10
MCRE:	Municipal Employer seeks to resolve claim of representation by one or more Employee Organizations.	-	-	1
CAS:	Employee Organization or Employer seeks clarification or amendment of recognized or certified bargaining unit.	63	62	64
MUP:	Complaint filed by employee organization against Municipal Employer.	319	256	257
UP:	Complaint filed by employee organization against Private Employer.	32	32	32
MUPL:	Complaint filed by Municipal Employer or an individual against employee organization.	61	78	48
UPL:	Complaint filed by Private Employer against employee organization.	6	1	8
SUP:	Complaint filed by employee organization against the Commonwealth.	84	44	31
SUPL:	Complaint filed by the Commonwealth against an employee organization.	52	15	14
SI:	Petition filed by Employer requesting the Commission to investigate strike or strike threat by employees.	11	18	24
RBA:	Employer or employee organization requests the Commission to order Binding Arbitration.	9	8	17
TOTAL		868	701	732

TABLE 3

ELECTIONS

	FY 78	FY 77	FY 76	FY 75	FY 74	FY 73	FY 72	FY 71
Total Elections	163	173	185	180	169	233	188	122

DECISIONS

	1978	1977
Hearing Officer	121	96
Commission	95	71
TOTAL	216	167

TABLE 4

TOTAL HEARINGS

	FY 78	FY 77	FY 76
Formal	119	114	96
Expedited	263	293	208
Informal	558	648	642
Other	47	35	27
Grand Total	987	1,090	973

TABLE 5

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 52 7/1/77	Town of Barnstable	Local 59, Teamsters, Chauffeurs, Warehousemen and Helpers of America	yes	Interim order-cease & desist complied with
SI 53 7/6/77	Town of Walpole	Local 1957, AFSCME	yes	hearing held-waiting to report to full Commission
SI 54 9/6/77	Southeastern Regional School District Committee	Local 1849, Southeastern Regional Teachers Federation	yes	Interim order-cease & desist and bargaining. Court enforcement strike settled with deal for expedited factfinding.
SI 55 9/8/77	City of Newton	AFSCME	no	--settled--
SI 56 9/16/77	Franklin School Committee	Franklin Education Association Massachusetts Teachers Association	yes	Interim order, injunction contempts-contract settled $155,000 fines paid.
SI 57 10/12/77	Town of Weymouth	Local 1395, AFSCME	yes	ordered to cease & desist
SI 58 3/6/78	Old Colony Reg. School District	Local 59, Teamsters	alleged	--dismissed--
SI 59 3/6/78	"	"	"	"
SI 60 3/9/78	City of Chelsea	Local 937, I.A.F.F.	no	--dismissed--
SI 61 3/31/78	City of Boston	Local 944, AFSCME	no	--deferred--
SI 62 6/6/78	Town of Rockland	Local 1700, AFSCME	no	--deferred--

APPENDIX A

Commission decision highlights

1) November 1977 The Commission ordered reinstatement and back pay plus 7% interest to four correction officers fired illegally by the Plymouth County Sheriff in 1975. The officers were fired, the Commission found, in an attempt to intimidate other employees from exercising their right to participate in union activities.

2) November 1, 1977 In a decision issued by the Commission concerning the Lawrence School Committee and the Lawrence School Department Clerical Employees Association, interest on back pay awards were increased from 6% to 7%.

3) April 1978 The Commission found that the Commonwealth of Massachusett committed an unfair labor practice when it made unilateral payroll deductions from state employees' payroll checks to recoup losses from an overpayment made by the Group Insurance Commission without prior bargaining with Alliance, AFSCME-SEIU, AFL-CIO.

4) April 27, 1978 In City of Boston School Committee and Administrative Guild, the Commission issued a decision that dealt with the complex issue of waiver by inaction.

5) June 2, 1978 The Commission ordered the Newton School Committee to offer reinstatement and back pay plus 7% interest to seven custodians who were laid off in July 1976. The Commission ruled that the School Committee had not bargained sufficiently with the Newton School Custodians Association over mandatory subjects of bargaining. Such issues as the criteria for the specific layoffs, recall and rehire rights, continued seniority, and severance pay were mandatory subjects of bargaining. The decision was significant because of the way it dealt with the complex issue of mandatory subjects of bargaining.

Higher Court Affirmations of Commission Decisions

1) Cambridge City Hospital house officers (interns, fellows and residents are defined as employees and therefore covered by G.L.c.150E. Superior Court concurs.

2) Supreme Judicial Court affirms Commission interpretation of "managerial employee. The Wellesley School Committee refused to bargain with a group of employees it considered managerial. The Commission, by its interpretation, found that the employees were not managerial and found that the School Committee violated G.L.c.150E by refusing to bargain. The SJC affirmed completely the Commission decision without reinterpreting or altering in any way the standards the Commission had used in order to come to its interpretation of "managerial."

3) The Superior Court, in a number of cases, supported the Commission's contention that decisions resulting from informal conference are nonappealable.

APPENDIX B

Major Elections

December 12, 13, 14 - Faculty in the State College system voted for representation by Massachusetts Teachers Association. 766 voted for MTA; 516 for American Federation of Teachers/American Association of University Professors; no organization 120.

December 8, 9 - Administrative, clerical, and technical employees at the University of Massachuse-ts, Amherst voted for representation by the University Staff Association/Massachusetts Teachers Asssociation/ National Education Association. The MTA/NEA beat the incumbent Massachusetts State Employees Association by a vote of 372 to 33, with 249 voting for no union.

January 20-February 6- Mail in ballot election by probation and court officers. Local 254 SEIU/AFL-CIO won with 589 votes out of 1151 cast. The election marked the first time that judicial employees were eligible to vote for a collective bargaining representative.

March 31 - Chelsea teachers voted for continued representation by the incumbent Chelsea Teachers Union, Local 1340, AFT, AFL-CIO. AFT won with 162 votes out of 256 ballots cast. The Massachusetts Teachers Association lost the election with 90 votes.

April 5 - Nurses employed by the City of Boston, the Department of Health and Hospitals at Boston City Hospital, the Long Island Chronic Disease Hospital, and the Mattapan Chronic Disease Hospital voted in SEIU, Local 285 over the incumbent Massachusetts Nurses Association. SEIU received 250 votes out of 484 cast.

ANNUAL REPORT
1979

Massachusetts Labor Relations Commission

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
1604 LEVERETT SALTONSTALL BUILDING
100 CAMBRIDGE STREET, BOSTON 02202
TELEPHONE: (617) 727-3505

EDWARD J. KING
GOVERNOR

JAMES S. COOPER
CHAIRMAN

GARRY J. WOOTERS
COMMISSIONER

JOAN G. DOLAN
COMMISSIONER

ANN DADALT
EXECUTIVE SECRETARY

November 14, 1979

TO:

The Honorable Michael Joseph Connolly
Secretary of State
Commonwealth of Massachusetts
Boston, Massachusetts

Sir:

We are pleased to submit to you the report of the Massachusetts Labor Relations Commission for fiscal year ending June 30, 1979, in compliance with the provisions of Section 32 of Chapter 30 of the General Laws, and Section 9-0(c) of Chapter 23 of the General Laws, as amended.

LABOR RELATIONS COMMISSION

JAMES S. COOPER, CHAIRMAN

GARRY J. WOOTERS, COMMISSIONER

JOAN G. DOLAN, COMMISSIONER

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ANNUAL REPORT, 1979

The Labor Relations Commission (the Commission) administers the Public Employee Bargaining Law, Chapter 150E, and the "Baby Wagner Act," Chapter 150A of the General Laws. These laws give employees of state and local government, and employees of private businesses which conduct only intra-state transactions, the right to organize and bargain collectively with their employers.

The Commission conducts elections for collective bargaining representatives, and certifies the results; holds hearings and issues decisions on unfair, or prohibited, labor practice charges; investigates strikes; and considers requests for binding arbitration.

Although the Commission has been in existence since 1937 to administer Chapter 150A, its jurisdiction was greatly expanded in 1964, 1973, and 1977, when the legislature granted collective bargaining rights to municipal, county, state and judicial employees. (See Table 1: "How Did Public Employees Bargaining Evolve?")

The purpose of this report is: to explain how the Commission functions; to report important agency decisions and court decisions issued this year; and, to provide information concerning the agency's workload and productivity.

MAJOR ACCOMPLISHMENTS OF THE YEAR

1. Decisions and Orders

A summary of the Commission's major Decisions and Orders of the past year appears on page 7.

2. Court Litigation

A summary of major court decisions in the past fiscal year appears on page 8.

3. Major Elections

A summary of the major elections in the past fiscal year appears on page 9.

4. New England Consortium of State Labor Relations Agencies

The Commission's role in this regional organization is set forth on page 6.

STRUCTURE OF THE COMMISSION

The Commission is composed of three members, appointed by the Governor, who serve five year terms. One commissioner is designated to act as Chairman. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law.

The Executive Secretary supervises employees under the direction of the Commission; prepares agendas for executive session; keeps the Commission informed of all matters pending; and maintains a permanent record of the disposition of any matter discussed and/or voted upon at the executive session. There is also an Assistant Executive Secretary.

A staff of attorneys acts as agents of the Commission to: prosecute any inquiry necessary to the performance of its functions; appear for and represent the Commission in any case in court; and to conduct hearings. During this fiscal year two new positions were integrated into the Commission structure, Chief Counsel and Deputy Chief Counsel. Chief Counsel directs the day-to-day activities of the legal staff; the Deputy Chief Counsel has primary responsibility for all litigation.

Labor Relations Examiners also act as Commission agents to conduct investigations and elections. Election Specialists are trained to conduct on-site elections and coordinate mail ballot elections along with the technical preparation of all election material.

The head clerk attends to bookkeeping and administrative matters. Stenographers report formal hearings. Secretaries type decisions, court briefs, send out notices, and perform other clerical and administrative tasks.

1. Commissioners and Executive Secretary

James S. Cooper has served as Chairman since October 1975. Previously he was an attorney for the Boston law firm of Holtz and Drachman, the Massachusetts Commission Against Discrimination, and the New Jersey Division on Civil Rights. He is a graduate of Rutgers University Law School, where he served as a clinical instructor the year following his graduation.

Garry J. Wooters was appointed to the Commission in November 1976, to replace Henry C. Alarie, who retired. Commissioner Wooters has previously served as counsel to the Commission, as field attorney for the National Labor Relations Board, and as counsel to the National Association of Government Employees. He is a graduate of Boston University Law School.

Joan G. Dolan was appointed as a Commissioner on July 18, 1977. She replaced Madeline H. Miceli, who retired in January. Commissioner Dolan was previously an attorney for the Massachusetts Teachers Association, and is a graduate of Northeastern University Law School.

Ann Da Dalt assumed her duties as Executive Secretary when Alfonso M. D'Apuzzo retired. She had previously served as Assistant Executive Secretary.

2. The Staff

Rita Alberti, secretary, has been with the Commission for over 20 years after a year at the Department of Elder Affairs. Frederick V. Casselman, chief counsel for the Commission is a graduate of Boston University Law School. Patty A. Olivieri, is the Commission's senior bookkeeper, she is a graduate of Burdett College. Shirley DeMarco is the Commission's election specialist and graduated from Fitten Central High School in East Boston. Diane M. Drapeau, counsel, a graduate of Sufffolk University Law School is a hearing officer with the Commission. Jean Strauten Driscoll, counsel, is a graduate of Boston College Law School. Sharon Henderson Ellis, counsel, is a graduate of Suffolk University Law School and the University of Washington. She has worked in the past with an arbitrator and a labor relations firm. David F. Grunebaum, deputy chief counsel, is a graduate of Boston University Law School and holds a Masters degree in Labor Law from New York University. Alice T. Hintsa, hearing stenographer, first came to the Commission in 1956. She was an instructor at the Stenotype Institute. Stuart A. Kaufman, counsel, is a graduate of Boston College Law School and previously served as legal counsel to the Legislature's Committee on Public Service. James M. Litton, counsel, is a graduate of New York University Law School and was counsel to the International Ladies Garment Workers Union in New York before coming to the Commission. Priscilla Lyons, assistant executive secretary, is a graduate of Boston College Law School. Robert B. McCormack, counsel, a graduate of Boston University Law School, has been at the Commission since 1972. Prior to that he was defense counsel for the AMICA Insurance Company and was in private practice in Hingham. John L. McLaughlin, labor relations examiner, has been with the Commission 13 years. A graduate of Boston College, he was previously with the National Labor Relations Board. Dale Smith, secretary, is a graduate of Northwest High School in St. Louis, Missouri. Arthur S. Weber, head clerk, was formerly a senior examiner with the Postal Inspection Service. He has worked for the Town of Braintree, the First National Bank and the State Police. Doris Murphy, senior clerk typist, is a graduate of Braintree High School. She previously worked for Westinghouse, 12 years as a teletype and switchboard operator. Roseann Forlizzi, receptionist, graduated from East Boston High School. Philip J. Dunn, counsel, is a graduate of Northeastern University Law School and worked with Gregory, Von Lapik, and Higle, a labor law firm in Michigan before coming to the Commission. Judith A. Wong, counsel, is a graduate of Boston University Law School, she had previously worked for the Massachusetts Commission Against Discrimination. Nancy Hanley, secretary, is a graduate of Lasall Junior College.

MAJOR FUNCTIONS OF THE COMMISSION

The following is a detailed description of how the Commission performs its four basic functions.

1. Representation Cases

When employees or a union file a petition requesting the Commission to conduct an election for a collective bargaining representative, the Commission must determine the appropriate bargaining unit. This requires a finding as to which employees share a "community of interest" at the bargaining table. Sometimes the employer and the union consent to an appropriate unit, and the Commission approves it. But if they cannot agree, or if they propose an inappropriate unit, the Commission conducts hearings to make a determination. After the unit is defined, the Commission conducts a secret ballot election, and certifies the results. (See chart 2) A special subset of representation petitions is "clarification petitions," filed by the employee organization or the employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

2. Unfair Labor Practices

There are employment practices prohibited under Chapter 150E §10(a) and (b), Chapter 150A §4(a) and (b), which the employer and the employee organization are prohibited from performing. If the employer, or employee organization believes that an employee, employer or employee organization has performed a prohibited practice, they can file an unfair labor practice charge (prohibited practice charge) with the Commission (Chart 3, Step A). The Commission conducts an informal conference when such a charge is filed, (step B), at which a Commission agent obtains statements from both parties and attempts to bring about a settlement (step C). The agent reports the results of the conference to the Commission (step D). If a settlement is not reached and the Commission finds that there is sufficient evidence to the charge to warrant a hearing, a complaint is issued (step E), and a formal (step F) or expedited (step G) hearing is held. A hearing officer or Commissioner presides at the hearings. During the hearings, witnesses are called and evidence is introduced. After an expedited hearing, the hearing officer issued a decision (step H), which is appealable to the full Commission (step I). Subsequent to a formal hearing, the Commission issues a decision (step J), which is appealable only to the courts (step K).

3. Strikes

Under Chapter 150E, public employees are prohibited from striking. Thus, when employees engage in or threaten to engage in a strike, the employer may petition the Commission to investigate. The Commission requires that representatives of the employer and employee organization appear for a formal investigation. The Commission "sets requirements that must be complied with." Such an investigation is given highest priority at the Commission.

4. Request for Binding Arbitration

If an employer and an employee organization enter a written contract which does not provide a grievance clause culminating in final and binding arbitration, to be invoked in the event of any dispute concerning the interpretation or application of such written agreement, the Commission may order such arbitration upon the request of either party.

ADDITIONAL FUNCTIONS

1. Public Information and Community Relations

The Commission believes that an informed and educated public contributes to the maintenance of stable labor relations. The more knowledgeable employees and employers are of the law, the better they will be able to abide by it, and take advantage of their rights under it. The Commission therefore makes every effort to provide information to the public and to meet with groups of employers and employees.

Our public information officer provides a link from the Commission to the media and the general public. The public information officer answers questions from the press concerning the status of various cases before the Commission and issues press releases when the Commission renders important decisions. The information officer is also responsible for the bi-monthly MLRC News which provides information about the day-to-day functioning of the Commission for labor relations professionals, including labor and management representatives. Each issue contains articles highlighting some of the Commission's more interesting cases; analysis of some aspect of Massachusetts General Laws Chapter 150E or 150A, or outside "Section 4"; information about people at the Commission; legislative updates; and statistics on the Commission's caseload. MLRC News is provided free of charge. Nearly 400 labor professionals including those from other states and Canada receive the News by mail.

Each day an attorney or examiner is assigned to aid the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve such problems, the "officer of the day" offers advice on where to seek assistance. The Commission established the officer of the day position last year, because it has an obligation to assist the large number of people who do not understand the maze of administrative agencies regulating the employer-employee relationship.

The Commission supplies information to three local professional publications in order to keep practitioners in the field of public sector labor relations informed. The Massachusetts Labor Relations Reporter publishes information concerning decisions, court cases, hearing elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commissions decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in the Government Employee Relations Reporter, the Bureau of National Affairs Labor Relations Reference Manual, and the Commerce Clearing House Labor Cases.

The Commission actively participates in the Boston Bar Association's Workshop for Labor Relations Practitioners. Commissioners or staff members have spoken at the Massachusetts Fire Chiefs Conference, the New England Public Employers Association, the Association of Massachusetts Town Counsels and City Solicitors, and the Institute of Industrial Relations at Holy Cross College.

Commission agents travel across the state in an effort to make its services more accessible. Most elections are conducted at the place of employment by the Commission agent. Commission agents also travel periodically to the western part of the state to conduct informal, formal, expedited hearings.

2. Union Registration and Union Contract File

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations, and the bargaining units they represent. Required information includes: the name and address of current officers; an address where notices can be sent; date of organization; date of certification; and the expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: "the aims and objectives of such organization, the scale of dues, initiation fee, fines and assessments to be charged to the members, and the annual salaries to be paid officers." This information is reported on standardized forms, which are available to the public.

Public employers are required to file copies of all collective bargaining agreements with the Commission.

3. Advisory Council on Employment Relations (ACER)

In 1976, the Commission created an Advisory Council on Employment Relations. The council, whose members are appointed by the Commission, consists of an equal number of representatives of employees, employers, and nonpartisan practitioners or academicians. The Chairman of the Commission is an ex officio member of the Council. The Commission refers to the Council for its study and advice on any matter concerning the relations of employers and employees. The Council may make recommendations with respect to amendments of G.L. Chapter 150E and/or rules and regulations of the Commission.

4. New England Consortium of State Labor Relations Agencies (NECSLRA)

The New England Consortium of State Labor Relations Agencies is composed of representatives from eight New England state labor relations agencies including the Massachusetts State Labor Relations Commission. The purpose of the Consortium is to develop and maintain a regional organization designed to provide training and a forum for exchange of ideas and experiences. The responsibility for all activities of the Consortium lies with the Board of Directors, which is composed of the chairperson or chief executive officer or their representative of each participating neutral agency.

The Consortium determined that its priority was to seek funding from the federal government to provide training for its professional personnel, either full time or ad hoc, in an effort to raise the professional quality of public services performed by the New England state labor relations agencies.

The Consortium was awarded an Interpersonnel Act Grant from the United States Civil Service Commission in the amount of $23,132 to develop and coordinate in-service symposia and seminars in the following "target" areas: (1) Legal Principles of Decision-Making for board and/or commission members and other individuals designated to act as hearing officers; (2) Operation Techniques/ Administration of a State Labor Relations Agency for administrators; and (3) Dispute Resolutions/Public Sector Neutrals for arbitrators, factfinders and mediators. A fourth seminar will be held for personnel involved in court litigation from the eight participating agencies. All training programs will be executed in fiscal 1980.

From Mass Labor Relations Commission
Annual Report 1979

ADMINISTRATIVE DECISION HIGHLIGHTS FISCAL 1979

Significant Commission Decisions:

1. In City of Boston, 6 MLC 1125, the Commission faced the question of the duty to bargain over work assignments where two or more bargaining units perform similar work. The Commission ruled that a union can require bargaining over the amount of work to be retained by its unit, but may not require bargaining over which aspects of the work will be retained.

2. In University of Massachusetts, 5 MLC 1896, the Commission dismissed a union's petition to represent graduate assistants employed at the University. Commissioner Wooters found that the academic and employment interests were so intertwined as to preclude bargaining. Chairman Cooper found that the graduate assistants employment interests did not rise to a level sufficient to warrant collective bargaining.

3. In City of Salem, 5 MLC 1433, the Commission held that, in the absence of a "zipper clause, an employer must bargain upon demand over matters not bargained or incorporated in the collective bargaining agreement.

4. In City of Worcester, 5 MLC 1108, 5 MLC 1332 and 6 MLC 1104, the Commission refused to direct elections in preexisting inappropriate units; rather, the Commission ordered further hearings which eventually resulted in redefined, appropriate units.

5. In Newton School Committee, 5 MLC 1017, the Commission held that employers must bargain over the method by which a reduction in force will be accomplished. Where the school committee laid off custodians without satisfying its bargaining obligation, the employees were awarded reinstatement with back pay.

LITIGATION HIGHLIGHTS FISCAL 1979

The Commission engaged in litigation in the Superior, Appeals, and Supreme Judicial Court of the Commonwealth. Litigation arose under G.L. c.105E §§11, and 9A and G.L. c.30A, §14, G.L. c.249, §4, and G.L. c.231A and the general equity jurisdiction of the courts.

Appeals Court

The Appeals Court rendered three decisions affirming Commission decisions.

(a) In City of Worcester v. Labor Relations Commission, the Appeals Court affirmed the right of the Commission to modify existing bargaining units and otherwise deferred to agency expertise.

(b) In Board of Selectmen of Marion v. Labor Relations Commission, the Appeals Court affirmed a Commission decision holding that, notwithstanding the opening meeting law, it is a per se refusal to bargain in good faith prohibited practice, for either party to refuse to negotiate in executive session.

(c) In Labor Relations Commission v. City of Everett, the Appeals Court held that the failure to file an Appeal of a Commission decision within 30 days would preclude the allegedly aggrieved party from raising any defenses except jurisdiction in an enforcement proceeding initiated by the Commission. The Court also held that the remedial authority of the Commission under G.L. c.150E, §11 was a broad grant of authority.

Supreme Judicial Court

The Supreme Judicial Court decided two Commission cases during the 1979 fiscal year. It also declined to hear two cases involving the Commission.

(a) The S.J.C. denied further appellate review in Marion and Everett thus leaving standing the appeals court decisions affirming the Commission.

(b) In Massachusetts Board of Regional Community Colleges v. Labor Relations Commission, the S.J.C. reversed the Superior Court and affirmed a Commission decision holding that one of the faculty members at Mt. Wachusetts Community College had been denied tenure because of his union activity. The S.J.C. ordered enforcement of the Commission's order requiring the college to reinstate the discharged teacher.

(c) In Southern Worcester County Regional Vocational School District v. Labor Relations Commission, the S.J.C. reversed the Superior Court Judgment and affirmed the Commission's decision. The Commission had found and the Court agreed, that the School Committee had refused to bargain in good faith by (i) refusing to bargain over contract terms for the current year (ii) insisting upon knowing the identity of union bargaining team members (iii) unilaterally changing wages for the current year, (iv) refusing to meet with the union bargaining team, and (v) removing union leaflets from teacher mailboxes. The Commission and the Court held that the School Committee had threatened and coerced teachers who engaged in union activities by (i) placing letters of reprimand in the personnel files (ii) threatening non-tenured teachers with discharge.

MAJOR ELECTIONS -- FISCAL 1979

September 14, 1978 ---------- City of Springfield

Blue-collar, non-professional employees who work in specified departments; and, all non-professional employees who work at Springfield Municipal Hospital voted for representation by AFSCME, Council 93, AFL-CIO, Local 910. 688 voted for AFSCME, 221 for National Association of Government Employees, 57 for Springfield Municipal Employees' Association, 10 no organization.

October 26, 1978 ---------- Adams-Cheshire Regional School District

Professional employees who teach three or more periods per day plus part-time kindergarten teachers, guidance counselors, department coordinators, and librarians voted for representation by the Adams-Cheshire Teachers Association/MTA/NEA. 76 voted for the NEA affiliate, 69 for the Adams-Cheshire Federation of Teachers, Local 3227, MFT, AFT, AFL-CIO.

November 7, 1978 ---------- University of Massachusetts

Professional staff members in certain named classification located at the Amherst and Boston campuses did not select the Union of Professional Employees--MTA as their representative for the purposes of collective bargaining by a vote of 202 to 100.

December 14, 1978 ---------- City of Worcester

An election was conducted in two separate units on this date. All full-time and regular part-time technical employees voted for representation by the Worcester City Employees Union, a division of National Association of Government Employees. 74 voted for NAGE, 21 voted for Local 495, Service Employees International Union, 19 challenged ballots and 1 no organization. In a unit of all full-time and regular part-time service maintenance and custodial laborers and craft employees, 886 ballots were cast; 539 for Local 495, Service Employees International Union, AFL-CIO, 305 for Worcester City Employees Union, a Division of the National Association of Government Employees, 29 challenged ballots, 7 no organization and 6 blank/void.

March 12 - March 16, 1979 ---------- Commonwealth of Massachusetts
Chief Administrative Justice

In an extensive on-site election conducted during the week of March 12 through March 16, 1979, a unit of all non-professional, non-managerial and non-confidential staff and clerical employees employed by the judiciary voted not to be represented by Local 254, Service Employees International Union, AFL-CIO.

April 5, 6, 1979 ---------- Southeastern Massachusetts University

Professors and certain named personnel voted for representation by the Southeastern Massachusetts University Faculty Federation, Local 1895, AFT. 152 voted for the AFT affiliate, 88 for Southeastern Massachusetts University Faculty Association, MTA.

FINANCIAL STATEMENT - FISCAL YEAR 1979

July 1, 1978 - June 30, 1979

Received from General Appropriation		$ 553,000.00
Expenditures		
Salaries	$ 451,303.01	
Special Services	10,511.33	
Supplies	33,105.62	
Travel	4,764.47	
Other Services & Expenses	14,574.93	
		$ 514,259.36
Balance Unexpended returned to State Treasury		$ 38,740.64
Income from Sale of Stenographic Records		$ 2,528.25

July 1, 1978 - June 30, 1979

PERSONAL SERVICES

Salaries as of June 30, 1979

James S. Cooper	Chairman	$ 25,371.48
Garry J. Wooters	Member, Labor Relations Commission	23,321.52
Joan G. Dolan	Member, Labor Relations Commission	23,321.52
Ann DaDalt	Executive Secretary	20,975.80
Frederick V. Casselman	Counsel IV	22,887.28
David F. Grunebaum	Counsel III	21,938.80
Robert B. McCormack	Counsel II	23,040.16
James M. Litton	Counsel II	21,515.52
Stuart A. Kaufman	Counsel II	20,753.20
Philip Dunn	Counsel II	18,466.24
Sharon H. Ellis	Counsel I	17,240.08
Jean S. Driscoll	Counsel I (P/T)	9,573.41
Diane M. Drapeau	Labor Relations Examiner	15,172.04
John L. McLaughlin	Labor Relations Examiner	18,753.80
Priscilla A. Lyons	Labor Relations Examiner	15,172.04
Judith A. Wong	Sr. Employee Relations Examiner	16,962.92
Alice T. Hintsa	Hearings Stenographer	14,870.44
Rita Alberti	Confidential Secretary	12,712.44
Shirley DeMarco	Election Specialist	12,712.44
Arthur S. Weber	Head Clerk	11,485.76
Dale E. Smith	Principal Clerk	9,931.48
Patricia A. Ciampa	Senior Bookkeeper	9,687.60
Nancy J. Hanley	Sr. Clerk & Stenographer	9,687.60
Maria Plati	Sr. Clerk & Stenographer (P/T)	7,169.76
Doris E. Murphy	Sr. Clerk & Typist	8,684.00
Susan Scott	Sr. Clerk & Typist	8,684.00
Roseann Vaccaro	Jr. Clerk & Stenographer	8,179.60
		$ 418,698.52

Vacant Positions

Assistant to the Executive Secretary	$ 13,655.72
Labor Relations Examiner	15,172.04
Hearings Stenographer (2)	24,561.68
Election Specialist	12,280.84
Principal Clerk	9,643.40
Sr. Clerk & Stenographer (2)	17,924.40
	$ 93,238.08

CASELOAD STATISTICS

Between 1966 and 1973, the Commission's caseload grew over 300 percent; since the passage of Chapter 150E in 1973, when state employees were granted collective bargaining rights, the caseload has grown an additional 20 percent.

Table 1 indicates these increases. Table 2 shows the total filings of different types of cases during the past fiscal year. The Commission's case code is explained in the table. Table 3 indicates the number of elections which the Commission conducted this past year. This number does not reflect the size of the elections, some of which require the attendance of a majority of the staff. Table 3 also indicates the total number of Hearing Officer and Commission Decisions issued. Table 4 details the number of strike investigations, the number of actual work stoppages, and the Commission's role in settling the disputes.

TABLES — PAGE

TABLE 1

TOTAL FILINGS

YEAR	79	78	77	78	75*	74*	73	72	71	66
Representation Cases										
(TOTAL)	182	231	249	304	400	297	287	299	201	144
Public	159	207	228	272	379	229	238	245	167	78
Private	23	24	21	32	21	68	49	54	34	66
Prohibited Practice Cases										
(TOTAL)	587	554	426	390	398	276	277	177	110	
Public	552	516	393	350	375	233	244	137	94	
Private	35	38	33	40	23	43	33	40	16	
Other**	95	83	26	42	17					
GRAND TOTAL	864	868	701	736	815	573	564	476	311	144

*Note: A moratorium on the processing of most state representation petitions was declared October 10, 1974 - March 3, 1975 and a moratorium for all petitions took place in May-July 1, 1974.

**Strikes investigations and requests for binding arbitration and clarification of bargaining unit petitions and petitions relative to enforcement of Commission decisions.

TABLE 2

BREAKDOWN OF TOTAL FILINGS

CODE	MEANING	FISCAL YEAR 79	78	77	76
MCR:	Petition by or on behalf of Municipal Employees seeking certification or decertification of an Employee Organization.	144	195	156	194
CR:	Petition by or on behalf of Private Employees seeking certification or decertification of an Employee Organization.	23	24	21	32
SCR:	Petition by or on behalf of Employees of the Commonwealth seeking certification or decertification of an Employee Organization.	12	12	10	10
MCRE:	Municipal Employer seeks to resolve claim of representation by one or more Employee Organizations.	3	-	-	1
CAS:	Employee Organization or Employer seeks clarification or amendment of recognized or certified bargaining unit.	57	63	62	64
MUP:	Complaint filed by employee organization against Municipal Employer.	392	319	256	257
UP:	Complaint filed by employee organization against Private Employer.	34	32	32	32
MUPL:	Complaint filed by Municipal Employer or an individual against employee organization.	41	61	78	48
UPL:	Complaint filed by Private Employer against employee organization.	1	6	1	8
SUP:	Complaint filed by employee organization against the Commonwealth.	95	84	44	31
SUPL:	Complaint filed by the Commonwealth against an employee organization.	25	52	15	14
SI:	Petition filed by Employer requesting the Commission to investigate strike or strike threat by employees.	22	11	18	24
RBA:	Employer or employee organization requests the Commission to order Binding Arbitration.	14	9	8	17
CEP:	Petition relative to enforcement of Commission decision or compliance with Commission rules and regulations.	1	-	-	-
TOTAL		864	868	701	732

TABLE 3

ELECTIONS

	FY 79	FY 78	FY 77	FY 76	FY 75	FY 74	FY 73	FY 72	FY 71
Total Elections	122	163	173	185	180	169	233	188	122

DECISIONS

	1979	1978	1977
Hearing Officer	106	121	96
Commission	106	95	71
TOTAL	212	216	167

TABLE 4

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 63 9/1/78	Taunton Municipal Lighting Plant	Local 1729 AFSCME AFL-CIO	yes	2 Interim orders (court enforcement preliminary injunction)
SI 64 9/6/78	Fall River School Committee	Fall River Educators Association	yes	Interim order court enforcement contempt findings by court. $260,000. fines payable to Commonwealth
SI 65 9/11/78	Chelmsford School Committee	Chelmsford Federation of Teachers	yes	Interim order & mediation
SI 66 9/12/78	City of Boston School Committee	Boston Teachers' Union Local 66 AFT AFL-CIO	no	Interim order & mediation
SI 67 9/12/78	City of Springfield	AFSCME Council 93 Local 910	no	Dismissed
SI 68 11/20/78	City of Boston	AFSCME, Council 93 & its affiliated local unions 1892 &804	yes	Found to be wild cat; interim order against individual participants
SI 69 12/22/78	City of Holyoke	Local union #790 of the Federation of State, City & Town Employees	witholding of emergency overtime	Interim order
SI 70 2/16/79	Leominster School Committee	Leominster Education Association	undetermined	Notice to parties
SI 71 3/7/79	City of Cambridge	Local 195 Independent Public Employees Association	undetermined	Dismissed
SI 72 3/26/79	Commonwealth of Mass.	Alliance, AFSCME/SEIU AFL-CIO	undetermined	Settled

TABLE 4 (Continued)

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 73 3/28/79	Chelsea School Committee	AFT & Chelsea Teachers Union, Local 1340	yes	Interim order - Cease & Desist Mediation ordered
SI 74 4/23/79	Westport School Committee	AFSCME, Council 93	yes	Interim order mediation
SI 75 4/23/79	Westport School Committee	Westport Federation of Teachers, AFT	yes	Interim order mediation
SI 76 4/25/79	City of Boston	Boston Police Patrolmen's Association	alleged	Settled
SI 77 4/25/79	City of Springfield	AFSCME, Council 93	alleged	None
SI 78 5/2/79	City of Worcester	SEIU Local 495	yes	2 Interim orders Court TRO
SI 79 5/10/79	Town of Braintree	Utility Workers of America Local 466	yes	Interim order - settled SI petition dismissed
SI 80 5/16/79	City of Boston	AFSCME, Council 93	yes	Interim order - cease & desist
SI 81 5/17/79	Town of Milford	Milford Permanent Firefighters Association	yes	Notice to parties followed by interim order; TRO
SI 82 5/17/79	City of Boston	AFSCME Council 93	yes	Interim order - cease & desist
SI 83 5/18/79	City of Chelsea	Chelsea City Hall Clerks Association	alleged	Settled
SI 84 5/21/79	Taunton Municipal Lighting Plant	AFSCME Local 1729	yes	Interim order cease & desist Dismissal of related case # MUP 3464

VIII. APPENDIX

Charts:

1. How Did Public Employee Bargaining Evolve
2. Representation Petition Flow Chart
3. Prohibited Practice Complaint Flow Chart

CHART 1

HOW DID PUBLIC EMPLOYEE BARGAINING EVOLVE?

1935 Wagner Act (National Labor Relations Act) gave collective bargaining rights to private sector employees in interstate commerce.

1937 Massachusetts passes Chapter 150A, "Baby Wagner Act," extending bargaining rights to private sector employees within the Commonwealth; Labor Relations Commission established.

1958 All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.

1960 Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the matter and method of bargaining Chapter 40, Section 4C.

1964 State employees given the right to bargain with respect to working conditions (but not wages). Chapter 140, Section 178F. Howerver, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations that bargaining took place.

1965 Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment. Chapter 149, Sections 178G-N. This repealed Chapter 40, Section 4C.

1969 Mendonca Commission established by legislature to revise public employee bargaining laws.

1973 All public employees--state and municipal--extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.

1974 Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission; modify union unfair labor practices; modify standards for exclusion of managerial employees.

1975 MLRC issued standards for Appropriate Bargaining Units affecting fifty five thousand state employees in more than two thousand job classifications. Ten statewide units were created - five non-professional and five professional.

1977 Chapter 150E extended to court employees in the judicial branch.

1977 Housing authorities and their employees covered by the representation and prohibited practice sections of Chapter 150E.

1977 Joint Labor-Management Committee established to oversee collective bargaining negotiations and impasses involving municipal police officers or firefighters.

Agency service fee provisions are clarified to require that employee organizations provide a rebate procedure and to indicate which expenditures may be rebated to employees.

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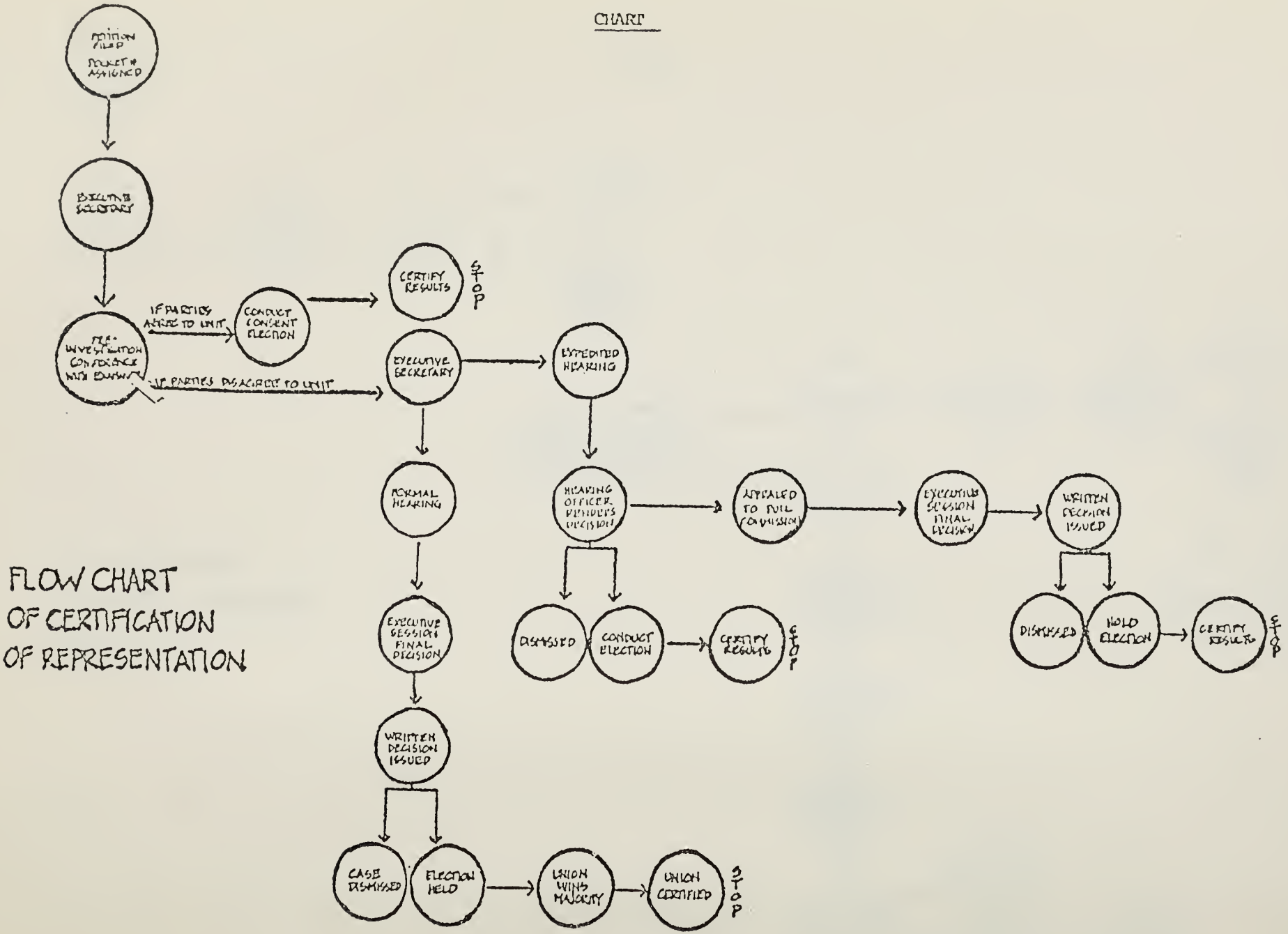

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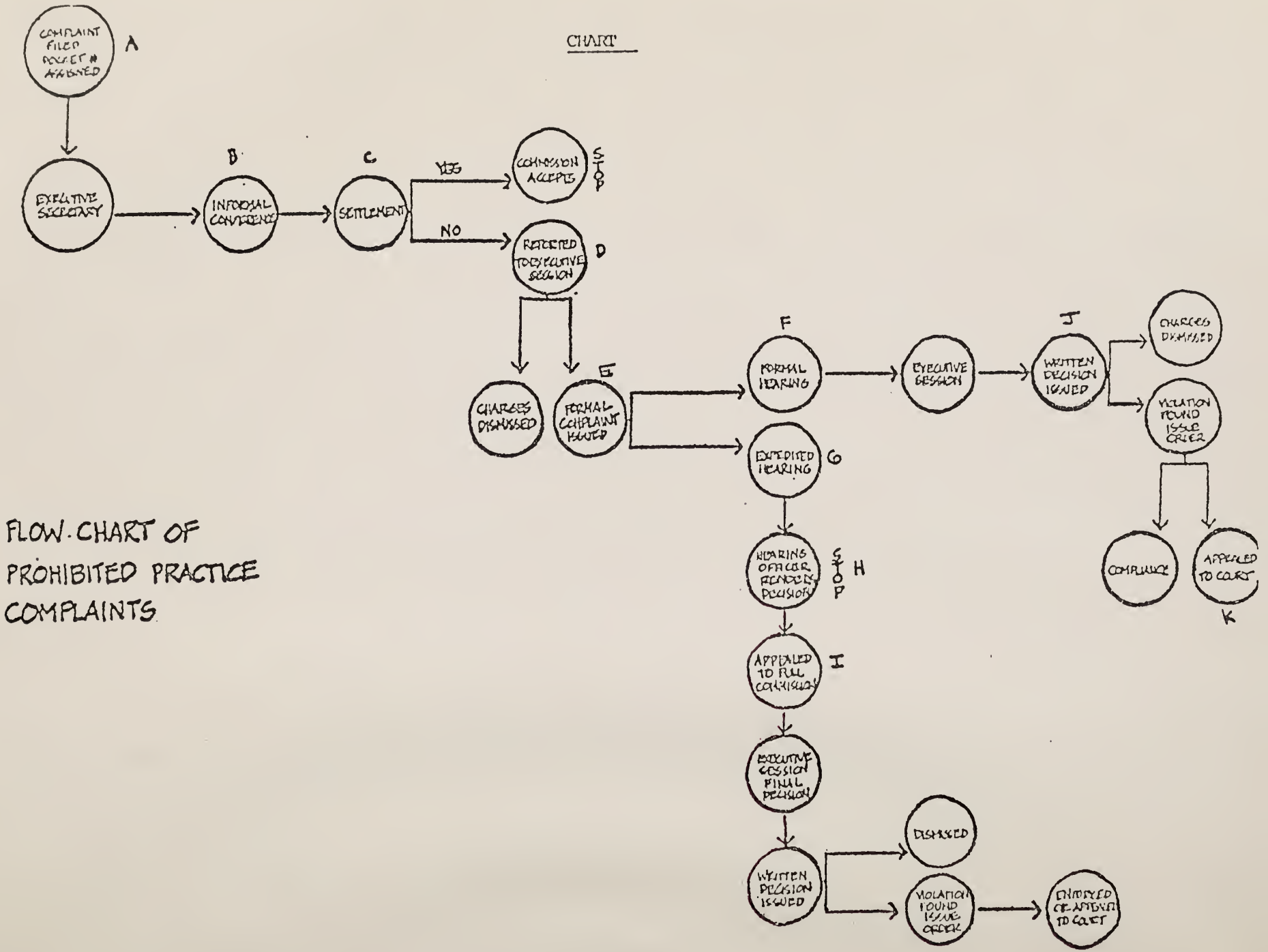

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